

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2849

**FISCAL
NOTE**

By Delegate Young

[Introduced February 24, 2025; referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §5-32-1, §5-32-2, §5-32-3, §5-32-4, §5-32-5, §5-32-6, §5-32-7, §5-32-8, §5-
 3 32-9, §5-32-10, §5-32-11, §5-32-12, §5-32-13, and §5-32-14, relating to retirement;
 4 establishing the West Virginia Secure Choice retirement program; providing for civil
 5 penalties; providing definitions; establishing a trust and administrative fund; establishing
 6 responsibilities of covered employers; providing a board of directors and their duties;
 7 clarifying standard of care and liability; providing ability for assistance from other states;
 8 transferring and appropriating money; and providing time frames for start of operation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. WEST VIRGINIA SECURE CHOICE RETIREMENT PROGRAM.

§5-32-1. Short title.

1 This article shall be known as and may be cited as the "West Virginia Secure Choice
 2 Retirement Program Act".

§5-32-2. Definitions.

1 Applicability. – For purposes of this article, the terms defined in this section have the
 2 meanings given them:

3 "Board" or "board of directors" means the board of directors of the West Virginia Secure
 4 Choice retirement program.

5 "Compensation" means compensation within the meaning of Section 219(f)(1) of the
 6 Internal Revenue Code that is received by a covered employee from, or with respect to service
 7 performed for, a covered employer.

8 "Contribution rate" means the percentage of compensation withheld from a covered
 9 employee's compensation and deposited in an account established for the covered employee
 10 under the program.

11 "Covered employee" means a person who is employed by a covered employer and who
 12 satisfies any other criteria established by the board.

13 Covered employee does not include:

14 (1) A person who, on December 31 of the preceding calendar year, was younger than 18
15 years of age;

16 (2) A person covered under the federal Railway Labor Act, as amended, United States
17 Code, title 45, sections 151 et seq.;

18 (3) A person on whose behalf an employer makes contributions to a Taft-Hartley multi-
19 employer pension trust fund; or

20 (4) A person employed by the government of the United States, another country, the state
21 of West Virginia, another state, or any subdivision thereof.

22 "Covered employer" means a person or entity:

23 (1) Engaged in a business, industry, profession, trade, or other enterprise in West Virginia,
24 whether for profit or not for profit;

25 (2) That employs five or more covered employees; and

26 (3) That does not sponsor or contribute to and did not in the immediately preceding 12
27 months sponsor or contribute to a retirement savings plan for its employees.

28 Covered employer does not include:

29 (1) An employer that has not engaged in a business, industry, profession, trade, or other
30 enterprise in West Virginia, whether for profit or not for profit, at any time during the immediately
31 preceding 12 months; and

32 (2) A state or federal government or any political subdivision thereof.

33 "Executive director" means the chief executive and administrative head of the program.

34 "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, United States
35 Code, title 26.

36 "Program" means the Secure Choice retirement program.

37 "Retirement savings plan" means a plan or program offered by an employer that permits
38 contributions to be set aside for retirement on a pretax or after-tax basis and permits all employees

39 of the employer to participate except those employees who have not satisfied participation
40 eligibility requirements that are no more restrictive than the eligibility requirements permitted under
41 section 410(b) of the Internal Revenue Code. Retirement savings plan includes but is not limited to
42 a plan described in section 401(a) of the Internal Revenue Code, an annuity plan or annuity
43 contract described in section 403(a) or 403(b) of the Internal Revenue Code, a plan within the
44 meaning of section 457(b) of the Internal Revenue Code, a simplified employee pension (SEP)
45 plan, a savings incentive match plan for employees (SIMPLE) plan, an automatic enrollment
46 payroll deduction individual retirement account, and a multiemployer pension plan described in
47 section 414(f) of the Internal Revenue Code.

48 "Secure Choice administrative fund" or "administrative fund" means the fund established
49 under this article.

50 "Secure Choice trust" or "trust" means a trust established under this code, to hold
51 contributions and investment earnings thereon under the program.

52 "Roth IRA" means an individual retirement account established under section 408A of the
53 Internal Revenue Code to hold and invest after-tax assets.

54 "Traditional IRA" means an individual retirement account established under section 408 of
55 the Internal Revenue Code to hold and invest pretax assets.

§5-32-3. Secure Choice Retirement Program.

1 (a) Program established.

2 (1) The board must operate an employee retirement savings program whereby employee
3 payroll deduction contributions are transmitted on an after-tax or pretax basis by covered
4 employers to individual retirement accounts established under the program.

5 (2) The board must establish procedures for opening a Roth IRA, a traditional IRA, or both
6 a Roth IRA and a traditional IRA for each covered employee whose covered employer transmits
7 employee payroll deduction contributions under the program.

8 (3) Contributions must be made on an after-tax (Roth) basis, unless the covered employee

9 elects to contribute on a pretax basis.

10 (b) Compliance with Internal Revenue Code. – The board must establish and administer
11 each Roth IRA and traditional IRA opened under the program in compliance with section 408 or
12 408A of the Internal Revenue Code, as applicable, for the benefit of the covered employee for
13 whom the account was opened.

14 (c) Contributions held in trust. – Each covered employer must transmit employee payroll
15 deduction contributions to an account established for the benefit of the covered employee in a trust
16 established to hold contributions under the program.

17 (d) Contribution rate.

18 (1) The board must establish default, minimum, and maximum employee contribution rates
19 and an escalation schedule to automatically increase each covered employee's contribution rate
20 annually until the contribution rate is equal to the maximum contribution rate.

21 (2) A covered employee must have the right, annually or more frequently as determined
22 by the board, to change the contribution rate, opt out or elect not to contribute, or cease
23 contributions.

24 (e) Vesting. – Covered employees are 100% vested in their accounts at all times.

25 (f) Withdrawals and distributions. – The board must establish alternatives permitting
26 covered employees to take a withdrawal of all or a portion of the covered employee's account
27 while employed and one or more distributions following termination of employment. Distribution
28 alternatives must include lifetime income options.

29 (g) Individuals not employed by a covered employer. – The board may allow individuals to
30 open and contribute to an account in the program, in which case the individual shall be considered
31 a covered employee for purposes of this article.

32 (h) Employee leasing companies.

33 (1) For purposes of this chapter, in the case of a taxpaying employer described in this
34 article that contracts with an employee leasing company, professional employer organization, or

35 other similar entity to obtain workers for the taxpaying employer from the entity for a fee, the
36 workers covered by the contract must be treated as employed by the taxpaying employer and not
37 by the entity, except that if the entity provides the workers with a retirement savings plan, the
38 taxpaying employer is not a covered employer.

39 (2) A covered employer that is a taxpaying employer described in this article may contract
40 with an employee leasing company, professional employer organization, or other similar entity to
41 assist the taxpaying employer with the performance of some or all of the taxpaying employer's
42 responsibilities under this chapter.

**§5-32-4. Establishment Of Secure Choice Trust and Administrative Fund; Employee
Accounts; Investments.**

1 (a) Secure Choice trust established. – The Secure Choice trust is established as an
2 instrumentality of the state to hold employee payroll deduction contributions and earnings on the
3 contributions. The board must appoint a financial institution to act as trustee or custodian. The
4 trustee or custodian must manage and administer trust assets for the exclusive purposes of
5 providing benefits and defraying reasonable expenses of administering the program.

6 (b) Secure Choice administrative fund established; money appropriated.

7 (1) The Secure Choice administrative fund is established in the state treasury as a fund
8 separate and apart from the Secure Choice trust.

9 (2) The board of directors may assess administrative fees on each covered employee's
10 account to be applied toward the expenses of administering the program. Money in the
11 administrative fund is appropriated to the board to pay administrative expenses of administering
12 the program if fees from the trust are not sufficient to cover expenses. The board must determine
13 which administrative expenses will be paid using money in the administrative fund and which
14 administrative expenses will be paid using money in the trust in the exercise of its fiduciary duty.

15 (3) The board may receive and deposit into the administrative fund any gifts, grants,
16 donations, loans, appropriations, or other moneys designated for the administrative fund from the

17 state, any unit of federal or local government, any other entity, or any person.

18 (4) Any interest or investment earnings that are attributable to money in the administrative
19 fund must be deposited into the administrative fund.

20 (c) Individual accounts established. – The trustee or custodian, as applicable, must
21 maintain an account for employee payroll deduction contributions with respect to each covered
22 employee. Interest and earnings on the amount in the account are credited to the account and
23 losses are deducted.

24 (d) Investments. – The board must make available for investment a diversified array of
25 investment funds selected by the State Board of Investment. Members of the board, the executive
26 director and members of the State Board of Investment, and all other fiduciaries are relieved of
27 fiduciary responsibility for investment losses resulting from a covered employee's investment
28 directions. Each covered employee is entitled to direct the investment of the contributions credited
29 to the covered employee's account in the trust and earnings on the contributions into the array of
30 investment funds selected by the State Board of Investment.

31 (e) Default investment fund. – The board must designate a default investment fund that is
32 diversified to minimize the risk of large losses and consists of target date funds, a balanced fund, a
33 capital preservation fund, or any combination of the foregoing funds. Accounts for which no
34 investment direction has been given by the covered employee must be invested in the default
35 investment fund. Members of the board, the executive director of the State Board of Investment,
36 and all other fiduciaries are relieved of fiduciary duty with regard to investment of assets in the
37 default investment fund.

38 (f) Inalienability of accounts. – No account under the program is subject to assignment or
39 alienation, either voluntarily or involuntarily, or to the claims of creditors, except as provided in this
40 article.

41 (g) Accounts not property of the state or covered employers. – The assets of the Secure
42 Choice trust shall be preserved, invested, and expended solely for the purposes of the trust and no

43 property rights in the trust assets shall exist in favor of the state or any covered employer. The
44 assets of the Secure Choice trust shall not be transferred or used by the state for any purpose
45 other than the purposes of the trust, including reasonable administrative expenses of the program.
46 Amounts deposited in the trust shall not constitute property of the state and shall not be
47 commingled with state funds, and the state shall have no claim to or against, or interest in, the
48 assets of the Secure Choice trust.

§5-32-5. Responsibilities of covered employers.

1 (a) Requirement to enroll employees. – Each covered employer must enroll its covered
2 employees in the program and withhold payroll deduction contributions from each covered
3 employee's paycheck, unless the covered employee has elected not to contribute.

4 (b) Remitting contributions. – A covered employer must timely remit contributions as
5 required by the board.

6 (c) Distribution of information. – Covered employers must provide information prepared by
7 the board to all covered employees regarding the program. The information must be provided to
8 each covered employee at least 30 days prior to the date of the first paycheck from which
9 employee contributions could be deducted for transmittal to the program, if the covered employee
10 does not elect to opt out of the program.

11 (d) No fiduciary responsibility. – Except for the responsibilities described in subdivisions 1
12 to 3, a covered employer has no obligations to covered employees and is not a fiduciary for any
13 purpose under the program or in connection with the Secure Choice trust. Covered employers are
14 not responsible for the administration, investment performance, plan design, or benefits paid to
15 covered employees.

16 (e) Employer liability. – A covered employer is not liable to a covered employee for
17 damages alleged to have resulted from a covered employee's participation in or failure to
18 participate in the program.

19 (f) Enforcement.

20 (1) The board may impose statutory civil penalties against any covered employer that fails
21 to comply with this article.

22 (2) At the request of the board, the Attorney General shall enforce the penalties imposed
23 by the board against a covered employer. Proceeds of such penalties, after deducting
24 enforcement expenses, must be deposited in the Secure Choice administrative fund and are
25 appropriated to the program.

26 (3) The board must provide covered employers with written warnings for the first year of
27 noncompliance before assessing penalties.

§5-32-6. Secure Choice Retirement Program Board of Directors.

1 (a) Membership. – The policy-making function of the program is vested in a board of
2 directors consisting of seven members as follows:

3 (1) The executive director of the West Virginia State Retirement System or the executive
4 director's designee;

5 (2) The executive director of the State Board of Investment or the executive director's
6 designee;

7 (3) Three members chosen by the Legislative Commission on Pensions and Retirement,
8 one from each of the following experience categories:

9 (A) Executive or operations manager with substantial experience in record keeping 401(k)
10 plans;

11 (B) Executive or operations manager with substantial experience in individual retirement
12 accounts; and

13 (C) Executive or other professional with substantial experience in retirement plan
14 investments;

15 (4) A human resources or retirement benefits executive from a private company with
16 substantial experience in administering the company's 401(k) plan, appointed by the Governor;
17 and

18 (5) A small business owner or executive appointed by the Governor.

19 (b) Appointment. – Members appointed by the governor must be appointed as provided in
20 this article.

21 (c) Membership terms.

22 (1) Board members serve for two-year terms, except for the executive directors of the West
23 Virginia State Retirement System and the State Board of Investment, who serve indefinitely.

24 (2) Board members' terms may be renewed, but no member may serve more than two
25 consecutive terms.

26 (d) Resignation; removal; vacancies.

27 (1) A board member may resign at any time by giving written notice to the board.

28 (2) A board member may be removed by the appointing authority and a majority vote of the
29 board following notice and hearing before the board. For purposes of this subdivision, the chair
30 may invite the appointing authority or a designee of the appointing authority to serve as a voting
31 member of the board if necessary to constitute a quorum.

32 (3) If a vacancy occurs, the Legislative Commission on Pensions and Retirement or the
33 Governor, as applicable, shall appoint a new member within 90 days.

34 (e) Compensation. – Public members are compensated and expenses reimbursed as
35 provided under this article.

36 (f) Chair. – The board shall select a chair from among its members. The chair shall serve a
37 two-year term. The board may select other officers as necessary to assist the board in performing
38 the board's duties.

39 (g) Executive director; staff. – The board must appoint an executive director, determine the
40 duties of the director, and set the compensation of the executive director. The board may also hire
41 staff as necessary to support the board in performing its duties.

42 (h) Duties. – In addition to the duties set forth elsewhere in this chapter, the board has the
43 following duties:

44 (1) To establish secure processes for enrolling covered employees in the program and for
45 transmitting employee and employer contributions to accounts in the trust;

46 (2) To prepare a budget and establish procedures for the payment of costs of administering
47 and operating the program;

48 (3) To lease or otherwise procure equipment necessary to administer the program;

49 (4) To procure insurance in connection with the property of the program and the activities of
50 the board, executive director, and other staff;

51 (5) To determine the following:

52 (A) Any criteria for a covered employee other than employment with a covered employer
53 under this article;

54 (B) Contribution rates and an escalation schedule under this article;

55 (C) Withdrawal and distribution options under this article; and

56 (D) The default investment fund under this article;

57 (6) to keep annual administrative fees, costs, and expenses as low as possible:

58 (A) Except that any administrative fee assessed against the accounts of covered
59 employees may not exceed a reasonable amount relative to the fees charged by auto-IRA or
60 defined contribution programs of similar size in the state of West Virginia or another state; and

61 (B) The fee may be asset-based, flat fee, or a hybrid combination of asset-based and flat
62 fee;

63 (7) To determine the eligibility of an employer, employee, or other individual to participate in
64 the program and review and decide claims for benefits and make factual determinations;

65 (8) To prepare information regarding the program that is clear and concise for
66 dissemination to all covered employees and includes the following:

67 (A) The benefits and risks associated with participating in the program;

68 (B) Procedures for enrolling in the program and opting out of the program, electing a
69 different or zero percent employee contribution rate, making investment elections, applying for a

70 distribution of employee accounts, and making a claim for benefits;

71 (C) The federal and state income tax consequences of participating in the program, which
72 may consist of or include the disclosure statement required to be distributed by retirement plan
73 trustees or custodians under the Internal Revenue Code and the Treasury Regulations
74 thereunder;

75 (D) How to obtain additional information on the program; and

76 (E) Disclaimers of covered employer and state responsibility, including the following
77 statements:

78 (i) Covered employees seeking financial, investment, or tax advice should contact their
79 own advisors;

80 (ii) Neither a covered employer nor the state of West Virginia are liable for decisions
81 covered employees make regarding their account in the program;

82 (iii) Neither a covered employer nor the state of West Virginia guarantees the accounts in
83 the program or any particular investment rate of return; and

84 (iv) Neither a covered employer nor the state of West Virginia monitors or has an obligation
85 to monitor any covered employee's eligibility under the Internal Revenue Code to make
86 contributions to an account in the program, or whether the covered employee's contributions to an
87 account in the program exceed the maximum permissible contribution under the Internal Revenue
88 Code;

89 (9) To publish an annual financial report, prepared according to generally accepted
90 accounting principles, on the operations of the program, which must include but not be limited to
91 costs attributable to the use of outside consultants, independent contractors, and other persons
92 who are not state employees and deliver the report to the chairs and ranking minority members of
93 the legislative committees with jurisdiction over jobs and economic development and state
94 government finance, the executive directors of the State Board of Investment and the Legislative
95 Commission on Pensions and Retirement, and the Legislative Reference Library;

96 (10) To publish an annual report regarding plan outcomes, progress toward savings goals
97 established by the board, statistics on the number of participants, participating employers, and
98 covered employees who have opted out of participation, plan expenses, estimated impact of the
99 program on social safety net programs, and penalties and violations, and disciplinary actions for
100 enforcement, and deliver the report to the chairs and ranking minority members of the legislative
101 committees with jurisdiction over jobs and economic development and state government finance,
102 the executive directors of the State Board of Investment and the Legislative Commission on
103 Pensions and Retirement, and the Legislative Reference Library;

104 (11) To file all reports required under the Internal Revenue Code or chapter 290;

105 (12) To, at the board's discretion, seek and accept gifts, grants, and donations to be used
106 for the program, unless such gifts, grants, or donations would result in a conflict of interest relating
107 to the solicitation of service provider for program administration, and deposit such gifts, grants, or
108 donations in the Secure Choice administrative fund;

109 (13) To, at the board's discretion, seek and accept appropriations from the state or loans
110 from the state or any agency of the state;

111 (14) To assess the feasibility of partnering with another state or a governmental subdivision
112 of another state to administer the program through shared administrative resources and, if
113 determined beneficial, enter into contracts, agreements, memoranda of understanding, or other
114 arrangements with any other state or an agency or subdivision of any other state to administer,
115 operate, or manage any part of the program, which may include combining resources,
116 investments, or administrative functions;

117 (15) To hire, retain, and terminate third-party service providers as the board deems
118 necessary or desirable for the program, including but not limited to the trustees, consultants,
119 investment managers or advisors, custodians, insurance companies, recordkeepers,
120 administrators, consultants, actuaries, legal counsel, auditors, and other professionals, provided
121 that each service provider is authorized to do business in the state;

122 (16) To interpret the program's governing documents and this chapter and make all other
123 decisions necessary to administer the program;

124 (17) To conduct comprehensive employer and worker education and outreach regarding
125 the program that reflect the cultures and languages of the state's diverse workforce population,
126 which may, in the board's discretion, include collaboration with state and local government
127 agencies, community-based and nonprofit organizations, foundations, vendors, and other entities
128 deemed appropriate to develop and secure ongoing resources; and

129 (18) To prepare notices for delivery to covered employees regarding the escalation
130 schedule and to each covered employee before the covered employee is subject to an automatic
131 contribution increase.

132 (i) Rules. – The board of directors is authorized to adopt rules as necessary to implement
133 this chapter.

134 (j) Conflict of interest; economic interest statement. – No member of the board may
135 participate in deliberations or vote on any matter before the board that will or is likely to result in
136 direct, measurable economic gain to the member or the member's family. Members of the board
137 shall file with the Campaign Finance and Public Disclosure Board an economic interest statement
138 in a manner as prescribed by this article.

§5-32-7. Fiduciary duty; standard of care.

1 (a) The members of the board, the executive director of the program, the executive director
2 and members of the State Board of Investment, and any person who controls the disposition or
3 investment of the assets of the Secure Choice trust:

4 (1) Owe a fiduciary duty to the covered employees who participate in the program and their
5 beneficiaries;

6 (2) Must administer the program solely for the exclusive benefit of such covered
7 employees and their beneficiaries, and for the exclusive purpose of providing benefits and paying
8 reasonable plan expenses;

- 9 (3) Are subject to the standard of care established in this article and
- 10 (4) Are indemnified and held harmless by the state of West Virginia for the reasonable
- 11 costs, expenses, or liability incurred as a result of any actual or threatened litigation or
- 12 administrative proceeding arising out of the performance of the person's duties.

13 (b) Except as otherwise established in this chapter, the fiduciaries under paragraph (a)
14 owe no other duty to covered employees, express or implied, in common law or otherwise.

§5-32-8. No state liability.

1 The state has no liability for the payment of, the amount of, or losses to any benefit to any
2 participant in the program.

§5-32-9. Other state agencies to provide assistance.

1 (a) The board may enter into intergovernmental agreements with the commissioner of
2 revenue, the commissioner of labor and industry, and any other state agency that the board deems
3 necessary or appropriate to provide outreach, technical assistance, or compliance services. An
4 agency that enters into an intergovernmental agreement with the board pursuant to this section
5 must collaborate and cooperate with the board to provide the outreach, technical assistance, or
6 compliance services under any such agreement.

7 (b) The commissioner of administration must provide office space in the Capitol complex
8 for the executive director and staff of the program.

§5-32-10. West Virginia Secure Choice Retirement Program; Start of Operations.

1 (a) Program start; phasing.

2 (1) The board of directors of the West Virginia Secure Choice retirement program must
3 begin operation of the secure choice retirement program under this article no earlier than January
4 1, 2026; and

5 (2) The board of directors must open the program in phases, and the last phase must be
6 opened no later than two years after the opening of the first phase.

7 (b) Board appointments; first meeting. – Appointing authorities must make appointments to

8 the board of directors under this article. The Legislative Commission on Pensions and Retirement
9 must designate one member of the board to convene the first meeting of the board of directors,
10 which must occur by March 1, 2026. At the first meeting, the board shall elect a chair.

§5-32-11. Board support until appointment of executive director.

1 With the assistance of the Legislative Coordinating Commission, the executive director of
2 the Legislative Commission on Pensions and Retirement must:

3 (1) Provide notice to members of the board regarding the first meeting of the board and
4 work with the member designated under this article to determine the agenda and provide meeting
5 support; and

6 (2) Serve as the interim executive director to assist the board until the board completes the
7 search, recruitment, and interview process and appoints the executive director under this article.

§5-32-12. Board To Recommend Penalties to the Legislative Commission on Pensions and Retirement.

1 No later than December 31, 2025, the board of directors of the West Virginia Secure
2 Choice retirement program must recommend to the Legislative Commission on Pensions and
3 Retirement penalties for failure by covered employers to comply with this article. The penalties for
4 a failure to comply with this article must be commensurate with penalties for failure to remit state
5 payroll taxes and, for any other compliance failure, commensurate with penalties under similar
6 programs in other states. The Legislative Commission on Pensions and Retirement must accept
7 or modify the recommendation and recommend legislation for passage during the 2026 legislative
8 session.

§5-32-13. Transfer.

1 In fiscal year 2025, \$5,000,000 is transferred from the Legislature's General Revenue fund
2 to the Secure Choice administrative fund established under this article to establish and administer
3 the Secure Choice retirement program.

§5-32-14. Effective date.

This article shall be effective upon enactment.

NOTE: The purpose of this bill is to create a Secure Choice trust as an instrumentality of the state to hold employee payroll deductions, contributions, and earnings on the contributions and to establish a Secure Choice administrative fund in the state treasury as a fund separate and apart from the Secure Choice trust for employers engaged in a business, industry, profession, trade, or other enterprise in West Virginia, whether for profit or not for profit, who have five or more covered employees and the employers do not sponsor or contribute to and did not in the immediately preceding 12 months sponsor or contribute to a retirement savings plan for its employees.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.