SENATE BILL 20-200

CONCERNING THE IMPLEMENTATION OF THE COLORADO SECURE SAVINGS PROGRAM TO INCREASE THE AMOUNT OF RETIREMENT SAVINGS BY COLORADO'S PRIVATE SECTOR WORKERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

In 2019, the general assembly created the Colorado secure savings board (board) in the office of the state treasurer to study the costs to the state of insufficient retirement savings and 3 approaches to increasing retirement savings in Colorado. The board found that a state-facilitated automatic enrollment individual retirement account program is the best
option for Colorado and recommended the establishment of such a program, coupled with the greater use of financial education tools in the state.

In furtherance of the board's recommendation, the bill directs the board to create and implement the Colorado secure savings program (program).

The bill specifies the powers and duties of the board in connection with the creation and administration of the program and updates the criteria to which the board is required to adhere in developing the program. The board is required to adopt rules regarding enrollment in the program, contributions to and withdrawals from program accounts, the process for employer exemptions from offering the program, and required disclosures.

The bill creates the Colorado secure savings program fund in the state treasury to consist of money appropriated by the general assembly, money transferred to the fund by the federal government, money from fees and penalties in connection with the program, and any gifts, grants, or donations made to the fund.

All individual account information for accounts under the program is confidential and may not be disclosed except under specified circumstances.

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Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Nearly half of all families in the United States have no retirement assets. Even among those families who are nearing retirement, four out of ten have no retirement assets.

(b) Middle-class, working-age families whose incomes are at the fiftieth percentile have, on average, only five thousand dollars saved in retirement accounts. The average for families with incomes at the ninetieth percentile is two hundred seventy-four thousand dollars.

(c) Most African-American and Latinx families have no retirement savings. About four out of ten African-American families and one out of four Latinx families have retirement savings. The median
white family with retirement savings has over three times as much saved as the median African-American or median Latinx family.

(d) Older workers are working longer and delaying their retirement. Many of today's seniors rely on their children, who are already struggling to raise their own families, or rely on other social services that are underfunded.

(e) Over nine hundred thousand working Coloradans, or about forty percent of the Colorado workforce, do not have access to a retirement savings account or program at work;

(f) Colorado's younger workers are disproportionately affected, with forty-eight percent of workers between the age of twenty-five and twenty-nine, forty-six percent of workers between the age of thirty and thirty-four, and forty-one percent of workers between the age of thirty-five and thirty-nine, lacking access to a retirement program at work;

(g) Minority workers in Colorado are also disproportionately affected, with forty-six percent of African-American workers and fifty-nine percent of Latinx workers lacking access to a retirement program at work;

(h) Colorado's lowest wage workers are also less likely to have access to a workplace retirement savings program. Sixty-nine percent of Colorado's workers in the lowest income quintile and forty percent of Colorado's workers in the second lowest income quintile have no access to a retirement program at work.

(i) The major reason many workers do not participate in retirement savings programs is because their employers do not offer them. Experts on retirement recommend that the best way to increase retirement savings is to enroll all employees in a workplace savings program with
the right to opt out. Workers are fifteen times more likely to save for 
retirement when they have access to an automatic enrollment savings 
program at work.

(j) For decades, Americans have built their retirement with 
traditional pensions, social security, and individual savings, but America's 
retirement system has not kept pace with the changing economy. Over 
half of Colorado workers in the private sector do not have any type of 
employer-sponsored retirement program, and individual savings have not 
filled the void.

(k) The future of Colorado's economic growth relies on our aging 
population having sufficient income in retirement so they can afford to 
live independently and have quality healthcare. Our seniors contribute 
significantly to local economies throughout the state, and their retirement 
investment spending provides stability to those communities. The cost of 
insufficient retirement savings to the state is estimated to be close to ten 
billion dollars over the next fifteen years.

(l) Colorado needs a remedy to the retirement security crisis so 
that Coloradans can look forward to a retirement free from financial 
anxiety or hardship;

(m) The Colorado general assembly created the Colorado secure 
savings board to study the costs of insufficient retirement savings to the 
state and three approaches to increasing retirement savings in Colorado: 
A retirement savings marketplace, an automatic enrollment IRA, and 
increasing financial education;

(n) The board found that a state-facilitated automatic enrollment 
IRA plan would be the best option for Colorado. The board further found 
that a retirement marketplace and similar approaches, where
implemented, have not expanded retirement savings in any meaningful way. Financial education programs on their own have not demonstrated the ability to meaningfully increase savings levels.

(o) The board's study indicates that under a range of scenarios and assumptions, a state-facilitated automatic enrollment IRA plan is expected to be cost-neutral to the state within a five-year period; and

(p) Therefore, the board recommended the establishment of a state-facilitated, automatic enrollment IRA plan, coupled with the greater use of financial education tools in the state.

(2) The general assembly further finds and declares that it is in the best interest of the state to create a state-facilitated Colorado secure savings program to provide a workplace savings program for all Colorado workers whose employers do not provide such a program.

SECTION 2. In Colorado Revised Statutes, amend 24-54.3-101 as follows:

**24-54.3-101. Short title.** The short title of this article 54.3 is the "Colorado Secure Savings Plan PROGRAM Act".

SECTION 3. In Colorado Revised Statutes, 24-54.3-102, amend (1) and (4); and add (6.5) as follows:

**24-54.3-102. Definitions.** As used in this article 54.3, unless the context otherwise requires:

(1) "Board" means the Colorado secure savings plan board established in section 24-54.3-103.

(4) "Fee" means investment management charges, administrative charges, investment advice charges, trading fees, marketing and sales fees, revenue sharing, broker fees, and other costs necessary to run the Colorado secure savings plan PROGRAM.
(6.5) "Program" means the Colorado Secure Savings Program created by the Board pursuant to Section 24-54.3-103 (1).

SECTION 4. In Colorado Revised Statutes, 24-54.3-103, amend (1) and (7) as follows:

24-54.3-103. Colorado secure savings program board - creation - composition. (1) There is hereby created in the office of the state treasurer the Colorado secure savings plan program board to study the feasibility of creating the Colorado secure savings plan as well as other approaches specified in section 24-54.3-104 to increase the amount of retirement savings by Colorado’s private sector workers.

(7) Members shall serve for a minimum of two years or until the board completes its report to the governor and general assembly as described in section 24-54.3-105. The term of any member appointed by the Board prior to July 1, 2020, shall expire on June 30, 2020. The governor shall make new appointments to the board for terms beginning July 1, 2020, and any member appointed to the board for a term beginning on or after July 1, 2020, shall serve a four-year term; except that members of the board appointed by the governor serve at the pleasure of the governor. A member is eligible for reappointment for an additional two terms.

SECTION 5. In Colorado Revised Statutes, add 24-54.3-103.5 as follows:

24-54.3-103.5. Colorado secure savings program board - powers - duties. (1) The Board shall have the following powers and duties:
(a) To establish, implement, and maintain the program developed pursuant to Section 24-54.3-104;

(b) To adopt rules for the general administration of the program;

(c) To direct the state treasurer to hire staff to support the oversight and administration of the program;

(d) To develop an investment policy statement and oversee the investment of the funds contributed to accounts in the program consistent with the investment restrictions established by the board. The investment restrictions shall be consistent with the objectives of the program, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board.

(e) To collect application, account, or administrative fees to defray the costs of administering the program;

(f) To create a grant program to incentivize compliance with the program and defray the costs of small businesses with five to twenty-five employees;

(g) To seek and accept gifts, grants, and donations to be used for the grant program and for the purposes of this article 54.3, unless such gifts, grants, or donations would result in a conflict of interest relating to the solicitation of vendors for program administration;
(h) To make and enter into contracts, agreements, or arrangements, and to retain, employ, and contract for any of the following services considered necessary or desirable, for carrying out the purposes set forth in this Article 54.3:

(I) Services of private and public financial institutions, depositories, consultants, investment advisers, investment administrators, and third-party program administrators;

(II) Research, technical, and other services; and

(III) Services of other state agencies to assist the board in its duties;

(i) To set penalties for employers that do not comply with the requirements of the program and work with the Department of Labor and Employment to enforce compliance with the program;

(j) To evaluate the need and procedures, if necessary, for the program, program administration, and board members to have private insurance;

(k) To develop and implement an outreach plan to gain input and disseminate information regarding the program and retirement savings in general;

(l) To assess the feasibility of multi-state or regional agreements to administer the program through shared administrative resources and enter into those agreements if determined beneficial; and

(m) To include financial education as a part of the Secure Savings Program implementation to the extent feasible given available resources.
(2) The board may enter into intergovernmental agreements with the Secretary of State, the Department of Revenue, the Department of Labor and Employment, and any other agency that the board deems appropriate to provide outreach, technical assistance, or compliance services for the purposes of this article 54.3. Any agency that enters into an intergovernmental agreement with the board pursuant to this section shall collaborate with the board to provide the outreach, technical assistance, or compliance services to the board.

SECTION 6. In Colorado Revised Statutes, 24-54.3-104, amend (1), (2) introductory portion, (2)(c), (2)(e), (2)(h), (2)(k), and (2)(l); and add (6) as follows:

24-54.3-104. Colorado secure savings program - development.

(1)(a) The board shall conduct or cause to be conducted detailed market and financial analyses to determine the financial feasibility and effectiveness of creating a retirement savings plan in the form of DEVELOP an automatic enrollment payroll deduction IRA, to be known as the Colorado secure savings plan. For purposes of the analyses specified in this subsection (1), PROGRAM. The plan would not be a defined benefit plan and the board shall make the assumptions ADHERE TO THE CRITERIA specified in subsections (1)(b) through (1)(g) of this section IN DEVELOPING THE PROGRAM.

(b) The state does not have a duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the Colorado secure savings plan. Any financial liability for the payment of retirement savings benefits in excess
of money available under the plan would be borne solely by the entities to whom the board contracts to provide insurance to protect the value of the plan.

(c) No state board, commission, agency, or any officer or employee thereof would be liable for any loss or deficiency resulting from particular investments selected under this article 54.3.

(d) Participating employers would not have any liability for an employee's decision to participate in, or opt out of, the Colorado secure savings plan or for the investment decisions of the board or of any enrollee.

(e) A participating employer would not be a fiduciary, or considered to be a fiduciary, over the Colorado secure savings plan. A participating employer would not bear responsibility for the administration, investment, or investment performance of the plan. Employers are not liable for any errors or omissions on disclosure forms, the website, or information provided by the state. A participating employer would not be liable with regard to investment returns, plan design, and benefits paid to plan enrollees.

(f) Money deposited by enrollees in the Colorado secure savings plan is not property of the state, and the plan is not a department, institution, or agency of the state. Amounts on deposit in the plan shall not be commingled with state money and the state shall not have a claim to or against, or interest in, such money.

(g) The board would be responsible for designing and disseminating to all employers an employer implementation packet and
an employee information packet, which would include background information on the Colorado secure savings plan and appropriate disclosures for employees. The employee information packet would also include information on the mechanics of making contributions to the plan and how to opt out of the plan.

(2) The board shall design the Colorado secure savings plan to promote greater retirement savings for private sector employees in a convenient, low-cost, and portable manner and would achieve the following:

(c) Pool investment money, invest money in the Colorado secure savings plan to achieve cost savings through efficiencies and economies of scale, and make or enter into contracts with up to three investment managers, private financial institutions, and other service providers to invest money and administer the plan. If fewer than three entities bid to be investment managers or meet the qualifications to be an investment manager as determined by the board, the plan may proceed with fewer than three investment managers.

(e) Minimize total annual fees associated with the Colorado secure savings plan. For the first five years of operation of the plan program, total annual fees associated with the plan program shall not exceed one percent of the total value of the plan's assets. In the sixth year of the operation of the plan and in each year thereafter, the total annual fees associated with the plan shall not exceed three-quarters of one percent of the total value of the plan's assets.
(h) Ensure that employers in all of Colorado's industries are covered by the Colorado secure savings plan PROGRAM and that employees in all of Colorado's industries can participate in the plan PROGRAM;

(k) Allow employers who are not covered by the Colorado secure savings plan PROGRAM to voluntarily participate in the plan PROGRAM; and

(l) Allow individuals who are not considered employees under the Colorado secure savings plan PROGRAM but who meet the qualifications to open an IRA to voluntarily participate in the plan PROGRAM.

(6) EMPLOYERS ARE REQUIRED TO COMPLY WITH THE REQUIREMENTS OF THE PROGRAM DEVELOPED PURSUANT TO THIS ARTICLE 54.3.

SECTION 7. In Colorado Revised Statutes, add 24-54.3-107, 24-54.3-108, 24-54.3-109, 24-54.3-110, and 24-54.3-111 as follows:

24-54.3-107. Colorado secure savings program - rules. (1) The BOARD SHALL ADOPT RULES THAT:

(a) Establish the process for enrollment in the program developed pursuant to section 24-54.3-104, including procedures for automatic enrollment of employees and for employees to opt out of the program;

(b) Establish the process for withdrawal from program accounts, including allowing an employee to withdraw money without penalty from the program for at least the first two years of enrollment within the program;

(c) Establish the process for participants to make the default contribution of five percent to program accounts and
TO ADJUST THE CONTRIBUTION LEVELS, INCLUDING MECHANISMS FOR
AUTOMATIC ADJUSTMENTS OF CONTRIBUTION LEVELS;

(d) ESTABLISH THE PROCESS FOR EMPLOYERS TO WITHHOLD
EMPLOYEE CONTRIBUTIONS TO PROGRAM ACCOUNTS FROM EMPLOYEES'
WAGES AND SEND THE CONTRIBUTIONS TO THE PROGRAM ADMINISTRATOR
FOR THE PROGRAM WITHIN NO MORE THAN FOURTEEN DAYS OF
CONTRIBUTION BEING WITHHELD FROM AN EMPLOYEE'S WAGES;

(e) ESTABLISH THE PROCESS FOR PARTICIPANTS TO MAKE
NONPAYROLL CONTRIBUTIONS TO PROGRAM ACCOUNTS;

(f) SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN
ACCORDANCE WITH LIMITS ESTABLISHED BY THE INTERNAL REVENUE
CODE;

(g) (I) ESTABLISH THE PROCESS AND REQUIREMENTS FOR
EMPLOYER EXEMPTION FROM OFFERING THE PROGRAM IF THE EMPLOYER
OFFERS A QUALIFIED RETIREMENT PLAN, INCLUDING BUT NOT LIMITED TO
A PLAN QUALIFIED UNDER SECTION 401 (a), SECTION 401 (k), SECTION 403
(a), SECTION 403 (b), SECTION 408 (k), SECTION 408 (p), OR SECTION 457
(b) OF THE INTERNAL REVENUE CODE;

(II) THE PROCESS FOR EXEMPTION SHALL BE MINIMAL FOR
EMPLOYERS AND THE BOARD SHALL USE EXISTING STATE FORMS AND
STATE COMPLIANCE STRUCTURES FOR EXEMPTION REPORTING;

(III) THE PROCESS FOR EXEMPTION SHALL ALLOW EMPLOYERS TO
BECOME EXEMPT IF THE EMPLOYER ENTERS INTO LEGALLY COMPLIANT
MULTIPLE EMPLOYER PLANS;

(h) ESTABLISH THE PROCESS AND REQUIREMENTS FOR PROVIDING
GRANTS TO INCENTIVIZE COMPLIANCE WITH THE PROGRAM AND DEFRAY
COSTS INCURRED BY SMALL BUSINESSES WITH FIVE TO TWENTY-FIVE
EMPLOYEES; EXCEPT THAT A GRANT FOR A SINGLE EMPLOYER SHALL NOT EXCEED THREE-HUNDRED DOLLARS;

(i) (I) Establish minimal fines for employer noncompliance in an amount up to one hundred dollars for each employee per year who is eligible to participate in the program, not to exceed an aggregate amount of five thousand dollars in a calendar year;

(II) Enforcement of fines shall not commence until at least one year after the program is established or one year after an employer is scheduled to enter the program, whichever is later;

(III) An employer shall not be fined until three months after the employer has received a notice of noncompliance;

(j) Establish the process for enforcing employer compliance with the program, in partnership with the Department of Labor and Employment; and

(k) Mandate the contents and frequency of required disclosures to employees, employers, and other program participants. These disclosures must include, but need not be limited to:

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

(II) Instructions for making contributions to the program;

(III) Instructions for opting out of the program;

(IV) Instructions for participating in the program with a level of contributions other than the default rate;

(V) The process for withdrawing retirement savings in
ACCORDANCE WITH THE EMPLOYEE'S INVESTMENT TYPE;

(VI) HOW TO OBTAIN ADDITIONAL INFORMATION ABOUT THE PROGRAM;

(VII) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD WORK WITH THE PROGRAM ADMINISTRATOR OR CONTACT FINANCIAL ADVISERS, THAT PARTICIPATING EMPLOYERS ARE NOT IN A POSITION TO PROVIDE FINANCIAL ADVICE, AND THAT PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR DECISIONS EMPLOYEES MAKE IN CONNECTION WITH THEIR PARTICIPATION IN THE PROGRAM;

(VIII) THAT THE PROGRAM IS NOT AN EMPLOYER-SPONSORED RETIREMENT PLAN;

(IX) THAT THE PROGRAM ACCOUNTS AND RATE OF RETURN ARE NOT GUARANTEED BY THE STATE; AND

(X) THE POSSIBLE TAX IMPLICATIONS AND RESTRICTIONS OF INDIVIDUAL RETIREMENT ACCOUNTS.

24-54.3-108. Colorado secure savings program fund - creation.

(1) THE COLORADO SECURE SAVINGS FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF THE FOLLOWING:

(a) MONEY APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY;

(b) MONEY TRANSFERRED TO THE FUND FROM THE FEDERAL GOVERNMENT, OTHER STATE AGENCIES, OR LOCAL GOVERNMENTS;

(c) MONEY FROM THE PAYMENT OF FEES, PENALTIES, AND THE PAYMENT OF OTHER MONEY DUE TO THE BOARD; AND

(d) ANY GIFTS, GRANTS, OR DONATIONS MADE TO THE BOARD.

(2) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

(3) Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund.

(4) Money in the fund is continuously appropriated to the board for the purposes of implementing and administering this article 54.3.

24-54.3-109. Administration - gifts, grants, and donations. The costs associated with the administration of this article 54.3 shall be paid solely through gifts, grants, or donations. The state treasurer may seek, accept, and expend gifts, grants, or donations from private or public sources for the costs associated with the administration of this article 54.3.

24-54.3-110. Confidentiality. Individual account information for accounts under the program developed pursuant to section 24-54.3-104, including but not limited to names, addresses, telephone numbers, personal identification information, amounts contributed, and earnings on amounts contributed, is confidential and shall be maintained as confidential; except that individual account information may be disclosed to the extent necessary to administer the program developed pursuant to section 24-54.3-104 in a manner consistent with this article 54.3, state tax laws, and the internal revenue code. The provisions of this section do not apply if the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed.
24-54.3-111. Annual report. Notwithstanding the provisions of section 24-1-136 (11), on or before April 1, 2022, and on or before April 1 each year thereafter, the board shall submit a report to the governor and to the members of the finance committees of the senate and the house of representatives, or any successor committees, detailing the board's activities and the status of the program. At a minimum, the report shall include statistics regarding enrollment in the program, the number of program accounts opened, the average amount employees are saving through the program, average contribution levels, a summary of common complaints or concerns about the program, and information regarding the administrative costs and fees associated with the program.

SECTION 8. In Colorado Revised Statutes, repeal sections 24-54.3-104 (2)(f), (2)(j), (3), (4), and (5), 24-54.3-105, and 24-54.3-106.

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.