

HOUSE No. 996

The Commonwealth of Massachusetts

PRESENTED BY:

Paul J. Donato

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to encourage retirement planning.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>1/19/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/25/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>2/21/2023</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>2/22/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>2/28/2023</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>4/4/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>4/11/2023</i>
<i>Kristin E. Kassner</i>	<i>2nd Essex</i>	<i>4/11/2023</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>4/20/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>4/20/2023</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>4/21/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>7/20/2023</i>

HOUSE No. 996

By Representative Donato of Medford, a petition (accompanied by bill, House, No. 996) of Paul J. Donato and others for legislation to encourage retirement planning by establishment of a Massachusetts secure choice savings program. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1067 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to encourage retirement planning.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Chapter 10 of the Massachusetts General Law is hereby amended by adding
2 after Section 35I the following new Section:- “ Section 35I ½. The Massachusetts secure Choice
3 Savings Program Act”.

4 Section 2. Definitions. Unless the context requires a different meaning or as expressly
5 provided in this Section, all terms shall have the same meaning as when used in a comparable
6 context in the Internal Revenue Code. As used in this Act:

7 "Board" means the Massachusetts Secure Choice Savings Board established under this
8 Act.

9 "Department " means the Department of Revenue.

10 "Commissioner" means the Commissioner of Revenue.

11 "Employee" means any individual who is 18 years of age or older, who is employed by
12 an employer, and who has wages that are allocable to Massachusetts during a calendar year
13 under the provisions of Massachusetts General Laws, Chapter 62.

14 "Employer" means a person or entity engaged in a business, industry, profession, trade,
15 or other enterprise in the Commonwealth of Massachusetts, whether for profit or not for profit,
16 that (i) has at no time during the previous calendar year employed fewer than 25 employees in
17 the State, (ii) has been in business at least 2 years, and (iii) has not offered a qualified retirement
18 plan, including, but not limited to, a plan qualified under Section 401(a), Section 401(k), Section
19 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal
20 Revenue Code of 1986 in the preceding 2 years.

21 "Enrollee" means any employee who is enrolled in the Program.

22 "Fund" means the Massachusetts Secure Choice Savings Program Fund.

23 "Internal Revenue Code" means Internal Revenue Code of 1986, or any successor law, in
24 effect for the calendar year.

25 "IRA" means a Roth IRA (individual retirement account) under Section 408A of the
26 Internal Revenue Code.

27 "Participating employer" means an employer or small employer that provides a payroll
28 deposit retirement savings arrangement as provided for by this Act for its employees who are
29 enrollees in the Program.

30 "Payroll deposit retirement savings arrangement" means an arrangement by which a
31 participating employer allows enrollees to remit payroll deduction contributions to the Program.

32 "Program" means the Massachusetts Secure Choice Savings Program.

33 "Small employer" means a person or entity engaged in a business, industry, profession,
34 trade, or other enterprise in the Commonwealth of Massachusetts, whether for profit or not for
35 profit, that (i) employed less than 25 employees at any one time in the Commonwealth
36 throughout the previous calendar year, or (ii) has been in business less than 2 years, or both items
37 (i) and (ii), but that notifies the Department that it is interested in being a participating employer.

38 "Wages" means any compensation within the meaning of Section 219(f)(1) of the Internal
39 Revenue Code that is received by an enrollee from a participating employer during the calendar
40 year.

41 Section 3. Establishment of Massachusetts Secure Choice Savings Program. A retirement
42 savings program in the form of an automatic enrollment payroll deduction IRA, known as the
43 Massachusetts Secure Choice Savings Program, is hereby established and shall be administered
44 by the Board for the purpose of promoting greater retirement savings for private-sector
45 employees in a convenient, low-cost, and portable manner.

46 Section 4. Massachusetts Secure Choice Savings Program Fund.

47 (a) The Massachusetts Secure Choice Savings Program Fund is hereby established as a
48 trust outside of the State Treasurer's Office, with the Board as its trustee. The Fund shall include
49 the individual retirement accounts of enrollees, which shall be accounted for as individual
50 accounts. Moneys in the Fund shall consist of moneys received from enrollees and participating

51 employers pursuant to automatic payroll deductions and contributions to savings made under this
52 Act. The Fund shall be operated in a manner determined by the Board, provided that the Fund is
53 operated so that the accounts of enrollees established under the Program meet the requirements
54 for IRAs under the Internal Revenue Code.

55 (b) The amounts deposited in the Fund shall not constitute property of the
56 Commonwealth and the Fund shall not be construed to be a department, institution, or agency of
57 the Commonwealth. Amounts on deposit in the Fund shall not be commingled with the
58 Commonwealth funds and the Commonwealth shall have no claim to or against, or interest in,
59 such funds.

60 Section 5. Massachusetts Secure Choice Administrative Fund. The Massachusetts Secure
61 Choice Administrative Fund ("Administrative Fund") is created as a nonappropriated separate
62 and apart trust fund in the State Treasurer's Office. The Board shall use moneys in the
63 Administrative Fund to pay for administrative expenses it incurs in the performance of its duties
64 under this Act. The Board shall use moneys in the Administrative Fund to cover start-up
65 administrative expenses it incurs in the performance of its duties under this Act. The
66 Administrative Fund may receive any grants or other moneys designated for administrative
67 purposes from the State, or any unit of federal or local government, or any other person, firm,
68 partnership, or corporation. Any interest earnings that are attributable to moneys in the
69 Administrative Fund must be deposited into the Administrative Fund.

70 Section 6. Composition of the Board. There is created the Massachusetts Secure Choice
71 Savings Board.

72 (a) The Board shall consist of the following 7 members:

73 (1) the State Treasurer, or his or her designee, who shall serve as chair;
74 (2) the State Comptroller, or his or her designee;
75 (3) the Secretary of the Commonwealth, or his or her designee;
76 (4) two public representatives with expertise in retirement savings plan
77 administration or investment, or both, appointed by the Governor; a representative of
78 participating employers, appointed by the Governor; and
79 (5) a representative of enrollees, appointed by the Secretary of the
80 Commonwealth.

81 (b) Members of the Board shall serve without compensation but may be reimbursed for
82 necessary travel expenses incurred in connection with their Board duties from funds appropriated
83 for the purpose.

84 (c) The initial appointments shall be as follows: one public representative for 4 years; one
85 public representative for 2 years; the representative of participating employers for 3 years; and
86 the representative of enrollees for 1 year. Thereafter, all appointments shall be for terms of 4
87 years.

88 (d) A vacancy in the term of an appointed Board member shall be filled for the balance of
89 the unexpired term in the same manner as the original appointment.

90 (e) Each Board member, prior to assuming office, shall take an oath that he or she will
91 diligently and honestly administer the affairs of the Board and that he or she will not knowingly
92 violate or willingly permit to be violated any of the provisions of law applicable to the Program.

93 The oath shall be certified by the officer before whom it is taken and immediately filed in the
94 office of the Secretary of the Commonwealth .

95 Section 7. Fiduciary Duty. The Board, the individual members of the Board, the trustee
96 appointed under subsection (b) of Section 30, any other agents appointed or engaged by the
97 Board, and all persons serving as Program staff shall discharge their duties with respect to the
98 Program solely in the interest of the Program's enrollees and beneficiaries as follows:

99 (1) for the exclusive purposes of providing benefits to enrollees and beneficiaries and
100 defraying reasonable expenses of administering the Program;

101 (2) by investing with the care, skill, prudence, and diligence under the prevailing
102 circumstances that a prudent person acting in a like capacity and familiar with those matters
103 would use in the conduct of an enterprise of a like character and with like aims; and

104 (3) by using any contributions paid by employees and employers into the trust
105 exclusively for the purpose of paying benefits to the enrollees of the Program, for the cost of
106 administration of the Program, and for investments made for the benefit of the Program.

107 Section 8. Duties of the Board. In addition to the other duties and responsibilities stated
108 in this Act, the Board shall:

109 (a) Cause the Program to be designed, established and operated in a manner that:

110 (1) accords with best practices for retirement savings vehicles;

111 (2) maximizes participation, savings, and sound investment practices;

112 (3) maximizes simplicity, including ease of administration for participating employers
113 and enrollees;

114 (4) provides an efficient product to enrollees by pooling investment funds;

115 (5) ensures the portability of benefits; and

116 (6) provides for the de-accumulation of enrollee assets in a manner that maximizes
117 financial security in retirement.

118 (b) Appoint a trustee to the IRA Fund in compliance with Section 408 of the Internal
119 Revenue Code.

120 (c) Explore and establish investment options, subject to Section 45 of this Act, that offer
121 employees returns on contributions and the conversion of individual retirement savings account
122 balances to secure retirement income without incurring debt or liabilities to the State.

123 (d) Establish the process by which interest, investment earnings, and investment losses
124 are allocated to individual program accounts on a pro rata basis and are computed at the interest
125 rate on the balance of an individual's account.

126 (e) Make and enter into contracts necessary for the administration of the Program and
127 Fund, including, but not limited to, retaining and contracting with investment managers, private
128 financial institutions, other financial and service providers, consultants, actuaries, counsel,
129 auditors, third-party administrators, and other professionals as necessary.

130 (f) Conduct a review of the performance of any investment vendors every 4 years,
131 including, but not limited to, a review of returns, fees, and customer service. A copy of reviews
132 conducted under this subsection (f) shall be posted to the Board's Internet website.

133 (g) Determine the number and duties of staff members needed to administer the Program
134 and assemble such a staff, including, as needed, employing staff, appointing a Program
135 administrator, and entering into contracts with the State Treasurer to make employees of the
136 State Treasurer's Office available to administer the Program.

137 (h) Cause moneys in the Fund to be held and invested as pooled investments described in
138 Section 45 of this Act, with a view to achieving cost savings through efficiencies and economies
139 of scale.

140 (i) Evaluate and establish the process by which an enrollee is able to contribute a portion
141 of his or her wages to the Program for automatic deposit of those contributions and the process
142 by which the participating employer provides a payroll deposit retirement savings arrangement to
143 forward those contributions and related information to the Program, including, but not limited to,
144 contracting with financial service companies and third-party administrators with the capability to
145 receive and process employee information and contributions for payroll deposit retirement
146 savings arrangements or similar arrangements.

147 (j) Design and establish the process for enrollment under Section 60 of this Act, including
148 the process by which an employee can opt not to participate in the Program, select a contribution
149 level, select an investment option, and terminate participation in the Program.

150 (k) Evaluate and establish the process by which an individual may voluntarily enroll in
151 and make contributions to the Program.

152 (l) Accept any grants, appropriations, or other moneys from the Commonwealth, any unit
153 of federal, State, or local government, or any other person, firm, partnership, or corporation
154 solely for deposit into the Fund, whether for investment or administrative purposes.

155 (m) Evaluate the need for, and procure as needed, insurance against any and all loss in
156 connection with the property, assets, or activities of the Program, and indemnify as needed each
157 member of the Board from personal loss or liability resulting from a member's action or inaction
158 as a member of the Board.

159 (n) Make provisions for the payment of administrative costs and expenses for the
160 creation, management, and operation of the Program, including the costs associated with
161 subsection (b) of Section 20 of this Act, subsections (e), (f), (h), and (l) of this Section,
162 subsection (b) of Section 45 of this Act, subsection (a) of Section 80 of this Act, and subsection
163 (n) of Section 85 of this Act. Subject to appropriation, the Commonwealth may pay
164 administrative costs associated with the creation and management of the Program until sufficient
165 assets are available in the Fund for that purpose. Thereafter, all administrative costs of the Fund,
166 including repayment of any start-up funds provided by the State, shall be paid only out of
167 moneys on deposit therein. However, private funds or federal funding received under subsection
168 (k) of Section 30 of this Act in order to implement the Program until the Fund is self-sustaining
169 shall not be repaid unless those funds were offered contingent upon the promise of such
170 repayment. The Board shall keep annual administrative expenses as low as possible, but in no
171 event shall they exceed 0.75% of the total trust balance.

172 (o) Allocate administrative fees to individual retirement accounts in the Program on a pro
173 rata basis.

174 (p) Set minimum and maximum contribution levels in accordance with limits established
175 for IRAs by the Internal Revenue Code.

176 (q) Facilitate education and outreach to employers and employees.

177 (r) Facilitate compliance by the Program with all applicable requirements for the Program
178 under the Internal Revenue Code, including tax qualification requirements or any other
179 applicable law and accounting requirements.

180 (s) Carry out the duties and obligations of the Program in an effective, efficient, and low-
181 cost manner.

182 (t) Exercise any and all other powers reasonably necessary for the effectuation of the
183 purposes, objectives, and provisions of this Act pertaining to the Program.

184 (u) Deposit into the Massachusetts Secure Choice Administrative Fund all grants, gifts,
185 donations, fees, and earnings from investments from the Massachusetts Secure Choice Savings
186 Program Fund that are used to recover administrative costs. All expenses of the Board shall be
187 paid from the Massachusetts Secure Choice Administrative Fund.

188 Section 9. Risk Management. The Board shall annually prepare and adopt a written
189 statement of investment policy that includes a risk management and oversight program. This
190 investment policy shall prohibit the Board, Program, and Fund from borrowing for investment
191 purposes. The risk management and oversight program shall be designed to ensure that an
192 effective risk management system is in place to monitor the risk levels of the Program and Fund
193 portfolio, to ensure that the risks taken are prudent and properly managed, to provide an
194 integrated process for overall risk management, and to assess investment returns as well as risk
195 to determine if the risks taken are adequately compensated compared to applicable performance
196 benchmarks and standards. The Board shall consider the statement of investment policy and any
197 changes in the investment policy at a public hearing.

198 Section 10. Investment firms.

199 (a) The Board shall engage, after an open bid process, an investment manager or
200 managers to invest the Fund and any other assets of the Program. Moneys in the Fund may be
201 invested or reinvested by the State Treasurer's Office or may be invested in whole or in part
202 under contract with the State Board of Investment, private investment managers, or both, as
203 selected by the Board. In selecting the investment manager or managers, the Board shall take
204 into consideration and give weight to the investment manager's fees and charges in order to
205 reduce the Program's administrative expenses.

206 (b) The investment manager or managers shall comply with any and all applicable federal
207 and state laws, rules, and regulations, as well as any and all rules, policies, and guidelines
208 promulgated by the Board with respect to the Program and the investment of the Fund, including,
209 but not limited to, the investment policy.

210 (c) The investment manager or managers shall provide such reports as the Board deems
211 necessary for the Board to oversee each investment manager's performance and the performance
212 of the Fund.

213 Section 11. Investment options.

214 (a) The Board shall establish as an investment option a life-cycle fund with a target date
215 based upon the age of the enrollee. This shall be the default investment option for enrollees who
216 fail to elect an investment option unless and until the Board designates by rule a new investment
217 option as the default as described in subsection (c) of this Section.

218 (b) The Board may also establish any or all of the following additional investment
219 options:

- 220 (1) a conservative principal protection fund;
- 221 (2) a growth fund;
- 222 (3) a secure return fund whose primary objective is the preservation of the safety of
223 principal and the provision of a stable and low-risk rate of return; if the Board elects to establish
224 a secure return fund, the Board may procure any insurance, annuity, or other product to insure
225 the value of individuals' accounts and guarantee a rate of return; the cost of such funding
226 mechanism shall be paid out of the Fund; under no circumstances shall the Board, Program,
227 Fund, the State, or any participating employer assume any liability for investment or actuarial
228 risk; the Board shall determine whether to establish such investment options based upon an
229 analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation;
- 230 (4) an annuity fund.

231 (c) If the Board elects to establish a secure return fund, the Board shall then determine
232 whether such option shall replace the target date or life-cycle fund as the default investment
233 option for enrollees who do not elect an investment option. In making such determination, the
234 Board shall consider the cost, risk profile, benefit level, and ease of enrollment in the secure
235 return fund. The Board may at any time thereafter revisit this question and, based upon an
236 analysis of these criteria, establish either the secure return fund or the life-cycle fund as the
237 default for enrollees who do not elect an investment option.

238 Section 12. Benefits. Interest, investment earnings, and investment losses shall be
239 allocated to individual Program accounts as established by the Board under subsection (d) of
240 Section 30 of this Act. An individual's retirement savings benefit under the Program shall be an
241 amount equal to the balance in the individual's Program account on the date the retirement

242 savings benefit becomes payable. The State shall have no liability for the payment of any benefit
243 to any participant in the Program.

244 Section 13. Employer and employee information packets and disclosure forms.

245 (a) Prior to the opening of the Program for enrollment, the Board shall design and
246 disseminate to all employers an employer information packet and an employee information
247 packet, which shall include background information on the Program, appropriate disclosures for
248 employees, and information regarding the vendor Internet website described in subsection (i) of
249 Section 60 of this Act.

250 (b) The Board shall provide for the contents of both the employee information packet and
251 the employer information packet.

252 (c) The employee information packet shall include a disclosure form. The disclosure form
253 shall explain, but not be limited to, all of the following:

254 (1) the benefits and risks associated with making contributions to the Program;

255 (2) the mechanics of how to make contributions to the Program;

256 (3) how to opt out of the Program;

257 (4) how to participate in the Program with a level of employee contributions other than
258 3%;

259 (5) the process for withdrawal of retirement savings;

260 (6) how to obtain additional information about the Program;

261 (7) that employees seeking financial advice should contact financial advisors, that
262 participating employers are not in a position to provide financial advice, and that participating
263 employers are not liable for decisions employees make pursuant to this Act;

264 (8) that the Program is not an employer-sponsored retirement plan; and

265 (9) that the Program Fund is not guaranteed by the Commonwealth.

266 (d) The employee information packet shall also include a form for an employee to note
267 his or her decision to opt out of participation in the Program or elect to participate with a level of
268 employee contributions other than 3%.

269 (e) Participating employers shall supply the employee information packet to employees
270 upon launch of the Program. Participating employers shall supply the employee information
271 packet to new employees at the time of hiring, and new employees may opt out of participation
272 in the Program or elect to participate with a level of employee contributions other than 3% at that
273 time.

274 Section 14. Program implementation and enrollment. Except as otherwise provided in
275 Section 93 of this Act, the Program shall be implemented, and enrollment of employees shall
276 begin, within 24 months after the effective date of this Act. The provisions of this Section shall
277 be in force after the Board opens the Program for enrollment.

278 (a) Each employer shall establish a payroll deposit retirement savings arrangement to
279 allow each employee to participate in the Program at most nine months after the Board opens the
280 Program for enrollment.

281 (b) Employers shall automatically enroll in the Program each of their employees who has
282 not opted out of participation in the Program using the form described in subsection (c) of
283 Section 55 of this Act and shall provide payroll deduction retirement savings arrangements for
284 such employees and deposit, on behalf of such employees, these funds into the Program. Small
285 employers may, but are not required to, provide payroll deduction retirement savings
286 arrangements for each employee who elects to participate in the Program.

287 (c) Enrollees shall have the ability to select a contribution level into the Fund. This level
288 may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for
289 the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees
290 may change their contribution level at any time, subject to rules promulgated by the Board. If an
291 enrollee fails to select a contribution level using the form described in subsection (c) of Section
292 55 of this Act, then he or she shall contribute 3% of his or her wages to the Program, provided
293 that such contributions shall not cause the enrollee's total contributions to IRAs for the year to
294 exceed the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the
295 Internal Revenue Code.

296 (d) Enrollees may select an investment option from the permitted investment options
297 listed in Section 45 of this Act. Enrollees may change their investment option at any time,
298 subject to rules promulgated by the Board. In the event that an enrollee fails to select an
299 investment option, that enrollee shall be placed in the investment option selected by the Board as
300 the default under subsection (c) of Section 45 of this Act. If the Board has not selected a default
301 investment option under subsection (c) of Section 45 of this Act, then an enrollee who fails to
302 select an investment option shall be placed in the life-cycle fund investment option.

303 (e) Following initial implementation of the Program pursuant to this Section, at least once
304 every year, participating employers shall designate an open enrollment period during which
305 employees who previously opted out of the Program may enroll in the Program.

306 (f) An employee who opts out of the Program who subsequently wants to participate
307 through the participating employer's payroll deposit retirement savings arrangement may only
308 enroll during the participating employer's designated open enrollment period.

309 (g) Employers shall retain the option at all times to set up any type of employer-
310 sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee
311 Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer
312 an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement
313 savings arrangement to allow employee participation in the Program.

314 (h) An employee may terminate his or her participation in the Program at any time in a
315 manner prescribed by the Board.

316 (i) The Board shall establish and maintain an Internet website designed to assist
317 employers in identifying private sector providers of retirement arrangements that can be set up
318 by the employer rather than allowing employee participation in the Program under this Act;
319 however, the Board shall only establish and maintain an Internet website under this subsection if
320 there is sufficient interest in such an Internet website by private sector providers and if the
321 private sector providers furnish the funding necessary to establish and maintain the Internet
322 website. The Board must provide public notice of the availability of and the process for inclusion
323 on the Internet website before it becomes publicly available. This Internet website must be
324 available to the public before the Board opens the Program for enrollment, and the Internet

325 website address must be included on any Internet website posting or other materials regarding
326 the Program offered to the public by the Board.

327 Section 15. Payments. Employee contributions deducted by the participating employer
328 through payroll deduction shall be paid by the participating employer to the Fund using one or
329 more payroll deposit retirement savings arrangements established by the Board under subsection
330 (h) of Section 30 of this Act, either:

331 (1) on or before the last day of the month following the month in which the compensation
332 otherwise would have been payable to the employee in cash; or

333 (2) before such later deadline prescribed by the Board for making such payments, but not
334 later than the due date for the deposit of tax required to be deducted and withheld relating to
335 collection of income tax at source on wages or for the deposit of tax required to be paid under the
336 unemployment insurance system for the payroll period to which such payments relate.

337 Section 16. Duty and liability of the Commonwealth.

338 (a) The Commonwealth shall have no duty or liability to any party for the payment of any
339 retirement savings benefits accrued by any individual under the Program. Any financial liability
340 for the payment of retirement savings benefits in excess of funds available under the Program
341 shall be borne solely by the entities with whom the Board contracts to provide insurance to
342 protect the value of the Program.

343 (b) No State board, commission, or agency, or any officer, employee, or member thereof
344 is liable for any loss or deficiency resulting from particular investments selected under this Act,
345 except for any liability that arises out of a breach of fiduciary duty under Section 25 of this Act.

346 Section 17. Duty and liability of participating employers.

347 (a) Participating employers shall not have any liability for an employee's decision to
348 participate in, or opt out of, the Program or for the investment decisions of the Board or of any
349 enrollee.

350 (b) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over
351 the Program. A participating employer shall not bear responsibility for the administration,
352 investment, or investment performance of the Program. A participating employer shall not be
353 liable with regard to investment returns, Program design, and benefits paid to Program
354 participants.

355 Section 18. Audit and reports.

356 (a) The Board shall annually submit:

357 (1) an audited financial report, prepared in accordance with generally accepted
358 accounting principles, on the operations of the Program during each calendar year by July 1 of
359 the following year to the Comptroller, Secretary of the Commonwealth, and the State Treasurer.

360 (2) a report prepared by the Board, which shall include, but is not limited to, a summary
361 of the benefits provided by the Program, including the number of enrollees in the Program, the
362 percentage and amounts of investment options and rates of return, and such other information
363 that is relevant to make a full, fair, and effective disclosure of the operations of the Program and
364 the Fund. The annual audit shall be made by an independent certified public accountant and shall
365 include, but is not limited to, direct and indirect costs attributable to the use of outside

366 consultants, independent contractors, and any other persons who are not State employees for the
367 administration of the Program.

368 (b) In addition to any other statements or reports required by law, the Board shall provide
369 periodic reports at least annually to participating employers, reporting the names of each enrollee
370 employed by the participating employer and the amounts of contributions made by the
371 participating employer on behalf of each employee during the reporting period, as well as to
372 enrollees, reporting contributions and investment income allocated to, withdrawals from, and
373 balances in their Program accounts for the reporting period. Such reports may include any other
374 information regarding the Program as the Board may determine.

375 Section 19. Penalties.

376 (a) An employer who fails without reasonable cause to enroll an employee in the Program
377 within the time prescribed under Section 60 of this Act shall be subject to a penalty equal to:

378 (1) \$250 for each employee for each calendar year or portion of a calendar year during
379 which the employee neither was enrolled in the Program nor had elected out of participation in
380 the Program; or

381 (2) for each calendar year beginning after the date a penalty has been assessed with
382 respect to an employee, \$500 for any portion of that calendar year during which such employee
383 continues to be unenrolled without electing out of participation in the Program.

384 (b) After determining that an employer is subject to penalty under this Section for a
385 calendar year, the Department shall issue a notice of proposed assessment to such employer,
386 stating the number of employees for which the penalty is proposed under item (1) of subsection

387 (a) of this Section and the number of employees for which the penalty is proposed under item (2)
388 of subsection (a) of this Section for such calendar year, and the total amount of penalties
389 proposed.

390 Upon the expiration of 90 days after the date on which a notice of proposed assessment
391 was issued, the penalties specified therein shall be deemed assessed, unless the employer had
392 filed a protest with the Department under subsection (c) of this Section.

393 If, within 90 days after the date on which it was issued, a protest of a notice of proposed
394 assessment is filed under subsection (c) of this Section, the penalties specified therein shall be
395 deemed assessed upon the date when the decision of the Department with respect to the protest
396 becomes final.

397 (c) A written protest against the proposed assessment shall be filed with the Department
398 in such form as the Department may by rule prescribe, setting forth the grounds on which such
399 protest is based. If such a protest is filed within 90 days after the date the notice of proposed
400 assessment is issued, the Department shall reconsider the proposed assessment and shall grant
401 the employer a hearing. As soon as practicable after such reconsideration and hearing, the
402 Department shall issue a notice of decision to the employer, setting forth the Department's
403 findings of fact and the basis of decision. The decision of the Department shall become final:

404 (1) if no action for review of the decision is commenced under the Massachusetts
405 Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), on the date on which the time for
406 commencement of such review has expired; or

407 (2) if a timely action for review of the decision is commenced under the Massachusetts
408 Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), on the date all proceedings in court

409 for the review of such assessment have terminated or the time for the taking thereof has expired
410 without such proceedings being instituted.

411 (d) As soon as practicable after the penalties specified in a notice of proposed assessment
412 are deemed assessed, the Department shall give notice to the employer liable for any unpaid
413 portion of such assessment, stating the amount due and demanding payment. If an employer
414 neglects or refuses to pay the entire liability shown on the notice and demand within 10 days
415 after the notice and demand is issued, the unpaid amount of the liability shall be a lien in favor of
416 the Commonwealth of Massachusetts upon all property and rights to property, whether real or
417 personal, belonging to the employer, and the provisions in the General Laws regarding liens,
418 levies and collection actions with regard to assessed and unpaid liabilities under that Act,
419 including the periods for taking any action, shall apply.

420 (e) An employer who has overpaid a penalty assessed under this Section may file a claim
421 for refund with the Department. A claim shall be in writing in such form as the Department may
422 by rule prescribe and shall state the specific grounds upon which it is founded. As soon as
423 practicable after a claim for refund is filed, the Department shall examine it and either issue a
424 refund or issue a notice of denial. If such a protest is filed, the Department shall reconsider the
425 denial and grant the employer a hearing. As soon as practicable after such reconsideration and
426 hearing, the Department shall issue a notice of decision to the employer. The notice shall set
427 forth briefly the Department's findings of fact and the basis of decision in each case decided in
428 whole or in part adversely to the employer. A denial of a claim for refund becomes final 90 days
429 after the date of issuance of the notice of the denial except for such amounts denied as to which
430 the employer has filed a protest with the Department. If a protest has been timely filed, the
431 decision of the Department shall become final:

432 (1) If no action for review of the decision is commenced under the Massachusetts
433 Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), on the date on which the time for
434 commencement of such review has expired; or

435 (2) if a timely action for review of the decision is commenced under the Massachusetts
436 Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), on the date all proceedings in court
437 for the review of such assessment have terminated or the time for the taking thereof has expired
438 without such proceedings being instituted.

439 (f) No notice of proposed assessment may be issued with respect to a calendar year after
440 June 30 of the fourth subsequent calendar year. No claim for refund may be filed more than 1
441 year after the date of payment of the amount to be refunded.

442 (g) The provisions of the Massachusetts Administrative Procedure Act (Mass. Gen. Laws
443 Ch. 30A) and the rules adopted pursuant to it shall apply to and govern all proceedings for the
444 judicial review of final decisions of the Department in response to a protest filed by the employer
445 under subsections (c) and (e) of this Section. Final decisions of the Department shall constitute
446 final agency decisions pursuant to the Massachusetts Administrative Procedure Act (Mass. Gen.
447 Laws Ch. 30A).

448 (h) Whenever notice is required by this Section, it may be given or issued by mailing it
449 by first-class mail addressed to the person concerned at his or her last known address.

450 (i) All books and records and other papers and documents relevant to the determination of
451 any penalty due under this Section shall, at all times during business hours of the day, be subject
452 to inspection by the Department or its duly authorized agents and employees.

453 (j) The Department may require employers to report information relevant to their
454 compliance with this Act on returns otherwise due from the employers under Massachusetts
455 General Laws, Chapter 62 and failure to provide the requested information on a return shall
456 cause such return to be treated as unprocessable.

457 (k) For purposes of any provision of State law allowing the Department or any other
458 agency of the Commonwealth to offset an amount owed to a taxpayer against a tax liability of
459 that taxpayer or allowing the Department to offset an overpayment of tax against any liability
460 owed to the State, a penalty assessed under this Section shall be deemed to be a tax liability of
461 the employer and any refund due to an employer shall be deemed to be an overpayment of tax of
462 the employer.

463 (l) Except as provided in this subsection, all information received by the Department
464 from returns filed by an employer or from any investigation conducted under the provisions of
465 this Act shall be confidential, except for official purposes within the Department or pursuant to
466 official procedures for collection of penalties assessed under this Act. Nothing contained in this
467 subsection shall prevent the Commissioner from publishing or making available to the public
468 reasonable statistics concerning the operation of this Act wherein the contents of returns are
469 grouped into aggregates in such a way that the specific information of any employer shall not be
470 disclosed. Nothing contained in this subsection shall prevent the Commissioner from divulging
471 information to an authorized representative of the employer or to any person pursuant to a
472 request or authorization made by the employer or by an authorized representative of the
473 employer.

474 (m) Civil penalties collected under this Act and fees collected pursuant to subsection (n)
475 of this Section shall be deposited into the Tax Compliance and Administration Fund. The
476 Department may, subject to appropriation, use moneys in the fund to cover expenses it incurs in
477 the performance of its duties under this Act. Interest attributable to moneys in the Tax
478 Compliance and Administration Fund shall be credited to the Tax Compliance and
479 Administration Fund.

480 (n) The Department may charge the Board a reasonable fee for its costs in performing its
481 duties under this Section to the extent that such costs have not been recovered from penalties
482 imposed under this Section.

483 (o) This Section shall go into effect 9 months after the Board notifies the Commissioner
484 that the Program has been implemented. Upon receipt of such notification from the Board, the
485 Department shall immediately post on its Internet website a notice stating that this Section is in
486 effect. This notice shall include a statement that rather than enrolling employees in the Program
487 under this Act, employers may sponsor an alternative arrangement, including, but not limited to,
488 a defined benefit plan, 401(k) plan, a Simplified Employee Pension (SEP) plan, a Savings
489 Incentive Match Plan for Employees (SIMPLE) plan, or an automatic payroll deduction IRA
490 offered through a private provider. The Board shall provide a link to the vendor Internet website
491 described in subsection (i) of Section 60 of this Act.

492 Section 20. Rules. The Department shall adopt rules and regulations, in accordance with
493 the Massachusetts Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), any rules that may
494 be necessary to implement this Act.

495 Section 21. Delayed implementation. If the Board does not obtain adequate funds to
496 implement the Program within the time frame set forth under Section 60 of this Act, the Board
497 may delay the implementation of the Program.

498 Section 22. Federal considerations. The Board shall request in writing an opinion or
499 ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income
500 Security Act regarding the applicability of the federal Employee Retirement Income Security Act
501 to the Program. The Board may not implement the Program if the IRA arrangements offered
502 under the Program fail to qualify for the favorable federal income tax treatment ordinarily
503 accorded to IRAs under the Internal Revenue Code or if it is determined that the Program is an
504 employee benefit plan and State or employer liability is established under the federal Employee
505 Retirement Income Security Act.

506 Section 23. The Massachusetts Secure Choice Administrative Fund, Massachusetts
507 General Laws, Chapter 10, Section 35I ½.