

HOUSE No. 998

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>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>11/9/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>12/6/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>5/28/2024</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>5/28/2024</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>5/29/2024</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>6/4/2024</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>6/6/2024</i>

HOUSE No. 998

By Representative Donato of Medford, a petition (accompanied by bill, House, No. 998) of Paul J. Donato and Sal N. DiDomenico for legislation to encourage retirement planning by establishment of a Massachusetts secure choice savings program. Financial Services.

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 1/2. 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 5 employees in the
17 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 or former 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 or a
26 traditional IRA under Section 408 of the Internal Revenue Code.

27 "Participating employer" means an employer that provides a payroll deposit retirement
28 savings arrangement as provided for by this Act for its employees who are enrolled in the
29 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 "Wages" means any compensation within the meaning of Section 219(f)(1) of the Internal
34 Revenue Code that is received by an enrollee from a participating employer during the calendar
35 year.

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

41 Section 4. Massachusetts Secure Choice Savings Program Fund.

42 (a) The Massachusetts Secure Choice Savings Program Fund is hereby established as a
43 trust outside of the State Treasurer's Office, with the Board as its trustee. The Fund shall include
44 the individual retirement accounts of enrollees, which shall be accounted for as individual
45 accounts. Moneys in the Fund shall consist of moneys received from enrollees and participating
46 employers pursuant to automatic payroll deductions and contributions to savings made under this
47 Act. The Fund shall be operated in a manner determined by the Board, provided that the Fund is
48 operated so that the accounts of enrollees established under the Program meet the requirements
49 for IRAs under the Internal Revenue Code.

50 (b) The amounts deposited in the Fund shall not constitute property of the
51 Commonwealth and the Fund shall not be construed to be a department, institution, or agency of
52 the Commonwealth. Amounts on deposit in the Fund shall not be commingled with

53 Commonwealth funds and the Commonwealth shall have no claim to or against, or interest in,
54 such funds.

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

63 Section 6. Composition of the Board. There is created the Massachusetts Secure Choice
64 Savings Board.

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

66 (1) the State Treasurer, or his or her designee, who shall serve as chair;

67 (2) the State Comptroller, or his or her designee;

68 (3) the Secretary of the Commonwealth, or his or her designee;

69 (4) two public representatives with expertise in retirement savings plan administration or
70 investment, or both, appointed by the Governor;

71 (5) one representative of participating employers, appointed by the Governor;

72 (6) one representative of enrollees, appointed by the Secretary of the Commonwealth.

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

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

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

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

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

87 Section 7. Fiduciary Duty. The Board, the individual members of the Board, the trustee
88 appointed under subsection (b) of Section 8, any other agents appointed or engaged by the
89 Board, and all persons serving as Program staff shall discharge their duties with respect to the
90 Program solely in the interest of the Program's enrollees and beneficiaries as follows:

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

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

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

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

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

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

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

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

104 (5) ensures the portability of benefits.

105 (b) Appoint a trustee to the Program Fund in compliance with Section 408 of the Internal
106 Revenue Code.

107 (c) Explore investment options, subject to Section 11 of this Act, that offer enrollees
108 returns on contributions and the conversion of individual retirement savings account balances to
109 secure retirement income without incurring debt or liabilities to the State.

110 (d) Make and enter into contracts necessary for the administration of the Program and
111 Fund, including, but not limited to, retaining and contracting with investment managers, private

112 financial institutions, other financial and service providers, consultants, actuaries, counsel,
113 auditors, third-party administrators, and other professionals as necessary.

114 (e) Conduct a review of the performance of any investment vendors no less frequently
115 than every 4 years, including, but not limited to, a review of returns, fees, and customer service.
116 A copy of reviews conducted under this subsection shall be posted to the Board's Internet
117 website.

118 (f) Determine the number and duties of staff members needed to administer the Program
119 and assemble such a staff, including, as needed, employing staff, appointing a Program
120 administrator, and entering into contracts with the State Treasurer to make employees of the
121 State Treasurer's Office available to administer the Program.

122 (g) Cause moneys in the Fund to be held and invested as pooled investments with a view
123 to achieving cost savings through efficiencies and economies of scale.

124 (h) Evaluate and establish the process by which an enrollee is able to contribute a portion
125 of his or her wages to the Program for automatic deposit of those contributions and the process
126 by which the participating employer provides a payroll deposit retirement savings arrangement to
127 forward those contributions and related information to the Program, including, but not limited to,
128 contracting with financial service companies and third-party administrators with the capability to
129 receive and process employee information and contributions for payroll deposit retirement
130 savings arrangements or similar arrangements.

131 (i) Design and establish the process for enrollment under Section 14 of this Act, including
132 the default contribution rate, account type, investment option, and automatic escalation rate. The
133 Board shall also design and establish the process by which an employee can:

134 (1) opt not to participate in the Program; (2) select a contribution rate, account type,
135 investment option, or escalation rate different than the default options set by the Board; or (3)
136 terminate participation in the Program.

137 (j) Evaluate and establish the process by which an individual may voluntarily enroll in
138 and make contributions to the Program.

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

142 (l) Evaluate the need for, and procure as needed, insurance against any and all loss in
143 connection with the property, assets, or activities of the Program, and indemnify as needed each
144 member of the Board from personal loss or liability resulting from a member's action or inaction
145 as a member of the Board.

146 (m) Make provisions for the payment of administrative costs and expenses for the
147 creation, management, and operation of the Program. Subject to appropriation, the
148 Commonwealth may pay administrative costs associated with the creation and management of
149 the Program until sufficient assets are available in the Fund for that purpose. Thereafter, all
150 administrative costs of the Fund, including repayment of any start-up funds provided by the
151 State, shall be paid only out of moneys on deposit therein. However, private funds or federal
152 funding received in order to implement the Program until the Fund is self-sustaining shall not be
153 repaid unless those funds were offered contingent upon the promise of such repayment. The
154 Board shall keep annual administrative expenses as low as possible and is authorized to charge

155 and collect reasonable administrative fees from enrollees. (n) Allocate administrative fees to
156 individual retirement accounts in the Program on a pro rata basis.

157 (o) Set minimum and maximum contribution levels in accordance with limits established
158 for IRAs by the Internal Revenue Code.

159 (p) Facilitate education and outreach to employers and employees. Design and establish
160 an internet website for the Program with details for employers, employees, and enrollees.

161 (q) Facilitate compliance by the Program with all applicable requirements for the
162 Program under the Internal Revenue Code, including tax qualification requirements or any other
163 applicable law and accounting requirements.

164 (r) Carry out the duties and obligations of the Program in an effective, efficient, and low-
165 cost manner.

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

168 (t) Deposit into the Massachusetts Secure Choice Administrative Fund all grants, gifts,
169 donations, fees, and earnings from investments from the Massachusetts Secure Choice Savings
170 Program Fund that are used to recover administrative costs. All expenses of the Board shall be
171 paid from the Massachusetts Secure Choice Administrative Fund.

172 Section 9. Risk Management. The Board shall prepare and adopt a written statement of
173 investment policy that includes a risk management and oversight program. This investment
174 policy shall prohibit the Board, Program, and Fund from borrowing for investment purposes. The
175 risk management and oversight program shall be designed to ensure that an effective risk

176 management system is in place to monitor the risk levels of the Program and Fund portfolio, to
177 ensure that the risks taken are prudent and properly

178 managed, to provide an integrated process for overall risk management, and to assess
179 investment returns as well as risk to determine if the risks taken are adequately compensated
180 compared to applicable performance benchmarks and standards. The Board shall consider the
181 statement of investment policy and any changes in the investment policy at a public hearing.

182 Section 10. Investment firms.

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

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

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

197 Section 11. Investment options.

198 (a) The Board shall establish as an investment option a life-cycle fund with a target date
199 based upon the age of the enrollee. This shall be the default investment option for enrollees who
200 fail to elect an investment option unless and until the Board designates by rule a new investment
201 option as the default.

202 (b) The Board may also establish additional investment options, including, but not limited
203 to, any of the following:

204 (1) a conservative principal protection fund;

205 (2) a growth fund;

206 (3) a secure return fund whose primary objective is the preservation of the safety of
207 principal and the provision of a stable and low-risk rate of return; if the Board elects to establish
208 a secure return fund, the Board may procure any insurance, annuity, or other product to insure
209 the value of individuals' accounts and guarantee a rate of return; the cost of such funding
210 mechanism shall be paid out of the Fund; under no circumstances shall the Board, Program,
211 Fund, the State, or any participating employer assume any liability for investment or actuarial
212 risk; the Board shall determine whether to establish such investment options based upon an
213 analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation;

214 (4) an annuity fund.

215 Section 12. Intergovernmental Collaboration, Data Sharing, and Multistate Agreements.

216 (a) The Board may enter into an intergovernmental agreement or memorandum of
217 understanding with the State and any agency of the State to receive outreach, technical

218 assistance, enforcement and compliance services, collection or dissemination of information
219 pertinent to the Program (subject to such obligations of confidentiality as may be agreed or
220 required by law), or other services or assistance. The State and any agencies of the State that
221 enter into such agreements or memoranda of understanding shall collaborate to provide the
222 outreach, assistance, information, and compliance or other services or assistance to the Board.
223 The memoranda of understanding may cover the sharing of costs incurred in gathering and
224 disseminating information and the reimbursement of costs for any enforcement activities or
225 assistance.

226 (b) All agencies of the Commonwealth shall cooperate as requested by the Program in the
227 performance of its duties under this Act, including, unless otherwise prohibited, the sharing of
228 relevant data as the parties shall mutually agree.

229 (c) The Board shall assess the feasibility of multistate or regional agreements to
230 administer the Program through shared administrative and operational resources and may enter
231 into those agreements if deemed beneficial to the Program.

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

233 (a) The Board shall design and disseminate an employer information packet and an
234 employee information packet, which shall include background information on the Program,
235 appropriate disclosures for employees, and information regarding the Internet website described
236 in Section 8 of this Act.

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

- 239 (1) the benefits and risks associated with making contributions to the Program;
- 240 (2) the mechanics of how to make contributions to the Program;
- 241 (3) how to opt out of the Program;
- 242 (4) how to participate in the Program with a level of employee contributions other than
243 the default contribution rate.
- 244 (5) the process for withdrawal of retirement savings;
- 245 (6) how to obtain additional information about the Program;
- 246 (7) that employees seeking financial advice should contact financial advisors, that
247 participating employers are not in a position to provide financial advice, and that participating
248 employers are not liable for decisions employees make pursuant to this Act;
- 249 (8) that the Program is not an employer-sponsored retirement plan; and
- 250 (9) that the Program Fund is not guaranteed by the Commonwealth.
- 251 (c) The employee information packet shall also include a form for an employee to note
252 his or her decision to opt out of participation in the Program or elect to participate with a level of
253 employee contributions other than the default rate set by the Board.
- 254 (d) Participating employers shall supply the employee information packet to employees
255 after the employer has registered for the Program. Participating employers shall supply the
256 employee information packet to new employees at the time of hiring, and new employees may
257 opt out of participation in the Program or elect to participate with a level of employee
258 contributions other than the default contribution rate at that time.

259 Section 14. Program implementation and enrollment. The Program shall be implemented,
260 and enrollment of employees shall begin, within 24 months after the effective date of this Act.

261 The provisions of this Section shall be in force after the Board opens the Program for enrollment.

262 (a) Each employer shall establish a payroll deposit retirement savings arrangement to
263 allow each employee to participate in the Program on a timeline set by the Board.

264 (b) Employers shall automatically enroll in the Program each of their employees who has
265 not opted out of participation in the Program and shall provide payroll deduction retirement
266 savings arrangements and deposit, on behalf of such employees, these funds into the Program.

267 (c) Enrollees shall have the ability to select a contribution level into the Fund. This level
268 may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for
269 the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees
270 may change their contribution level at any time, subject to rules promulgated by the Board. If an
271 enrollee fails to select a contribution level using the form prescribed by the Board, then he or she
272 shall contribute the default contribution rate of his or her wages to the Program.

273 (d) Enrollees may select an investment option from the permitted investment options
274 listed in Section 11 of this Act. Enrollees may change their investment option at any time,
275 subject to rules promulgated by the Board. In the event that an enrollee fails to select an
276 investment option, that enrollee shall be placed in the investment option selected by the Board as
277 the default.

278 (e) Employers shall retain the option at all times to set up any type of employer-
279 sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee
280 Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, instead of

281 having a payroll deposit retirement savings arrangement to allow employee participation in the
282 Program.

283 (f) An enrollee may terminate his or her participation in the Program at any time in a
284 manner prescribed by the Board.

285 Section 15. Payments. Employee contributions deducted by the participating employer
286 through payroll deduction shall be paid by the participating employer to the Fund using one or
287 more payroll deposit retirement savings arrangements established by the Board, either:

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

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

294 Section 16. Duty and liability of the Commonwealth.

295 (1) The State, the Board, each member of the Board or other State official, other State
296 boards, commissions, or agencies, any member, officer, or employee thereof, and the Program --

297 (a) have no responsibility for compliance by individuals with the conditions and other
298 provisions of the Internal Revenue Code that determine which individuals are eligible to make
299 tax-favored contributions to IRAs, in what amount, and in what time frame and manner,

300 (b) have no duty, responsibility, or liability to any party for the payment of any benefits
301 under the Program, regardless of whether sufficient funds are available under the Program to pay
302 such benefits,

303 (c) do not and shall not guarantee any interest rate or other rate of return on or investment
304 performance of any contribution or account balance, and

305 (d) are not and shall not be liable or responsible for any loss, deficiency, failure to realize
306 any gain, or any other adverse consequences, including without limitation any adverse tax
307 consequences or loss of favorable tax treatment, public assistance or other benefits, incurred by
308 any person as a result of participating in the Program.

309 (2) The debts, contracts, and obligations of the Program or the Board are not the debts,
310 contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the
311 State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of
312 the Program or the Board.

313 Section 17. Duty and liability of participating employers.

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

317 (b) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over
318 the Program. A participating employer shall not bear responsibility for the administration,
319 investment options, or investment performance of the Program. A participating employer shall

320 not be liable with regard to investment returns, Program design, and benefits paid to Program
321 participants.

322 Section 18. Audit and reports.

323 (a) The Board shall annually submit:

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

327 (2) a report prepared by the Board, which shall include, but is not limited to, a summary
328 of the benefits provided by the Program, including the number of enrollees in the Program, the
329 percentage and amounts of investment options and rates of return, and such other information
330 that is relevant to make a full, fair, and effective disclosure of the operations of the Program and
331 the Fund. The annual audit shall be made by an independent certified public accountant and shall
332 include, but is not limited to, direct and indirect costs attributable to the use of outside
333 consultants, independent contractors, and any other persons who are not State employees for the
334 administration of the Program.

335 (b) In addition to any other statements or reports required by law, the Board shall provide
336 periodic reports at least annually to enrollees, reporting contributions and investment income
337 allocated to, withdrawals from, and balances in their Program accounts for the reporting period.
338 Such reports may include any other information regarding the Program as the Board may
339 determine.

340 Section 19. Penalties.

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

343 (1) \$250 for each employee for each calendar year or portion of a calendar year during
344 which the employee neither was enrolled in the Program nor had elected out of participation in
345 the Program; and the employee or any appropriate official of the State may bring a civil action to
346 require the employer to enroll the employee and shall recover such costs and reasonable
347 attorney's fees as may be allowed by the court; and

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

351 (3) No penalty shall be imposed under subsection 19(a) on any failure for which it is
352 established that the employer subject to liability for the penalty did not know that the failure
353 existed and exercised reasonable diligence to meet the requirements of this Act.

354 (4) No penalty shall be imposed under subsection 19(a) on any failure if:

355 (A) the employer subject to liability for the penalty exercised reasonable diligence to
356 meet those

357 requirements; and

358 (B) the employer complies with those requirements with respect to each employee by the
359 end of the 90-day period beginning on the first date the employer knew, or exercising reasonable
360 diligence would have known, that the failure existed.

361 (5) In the case of a failure that is due to reasonable cause and not to willful neglect, all or
362 part of the penalty may be waived to the extent that the payment of the penalty would be
363 excessive or otherwise inequitable relative to the failure involved.

364 (6) Provide that, if a participating employer fails to transmit a payroll deduction
365 contribution to the Program on the earliest date the amount withheld from the enrollee's
366 compensation can reasonably be segregated from the participating employer's assets, but not
367 later than the 15th day of the month following the month in which the enrollee's contribution
368 amounts are withheld from his or her paycheck, the failure to remit such contributions on a
369 timely basis shall be subject to the same sanctions as employer misappropriation of employee
370 wage withholdings and to the penalties specified in subsection

371 19(a) above.

372 (b) Except as provided in this subsection, all information received by the Department
373 from returns filed by an employer or from any investigation conducted under the provisions of
374 this Act shall be confidential, except for official purposes within the Department or pursuant to
375 official procedures for collection of penalties assessed under this Act. Nothing contained in this
376 subsection shall prevent the Commissioner from publishing or making available to the public
377 reasonable statistics concerning the operation of this Act wherein the contents of returns are
378 grouped into aggregates in such a way that the specific information of any employer shall not be
379 disclosed. Nothing contained in this subsection shall prevent the Commissioner from divulging
380 information to an authorized representative of the employer or to any person pursuant to a
381 request or authorization made by the employer or by an authorized representative of the
382 employer.

383 (c) Civil penalties collected under this Act and fees collected pursuant to subsection (d)
384 of this Section shall be deposited into the Tax Compliance and Administration Fund. The
385 Department may, subject to appropriation, use moneys in the fund to cover expenses it incurs in
386 the performance of its duties under this Act. Interest attributable to moneys in the Tax
387 Compliance and Administration Fund shall be credited to the Tax Compliance and
388 Administration Fund.

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

392 (e) This Section shall go into effect 9 months after the Board notifies the Commissioner
393 that the Program has been implemented. Upon receipt of such notification from the Board, the
394 Department shall immediately post on its Internet website a notice stating that this Section is in
395 effect. This notice shall include a statement that rather than enrolling employees in the Program
396 under this Act, employers may sponsor an alternative arrangement, including, but not limited to,
397 a defined benefit plan, 401(k) plan, a Simplified Employee Pension (SEP) plan, or a Savings
398 Incentive Match Plan for Employees (SIMPLE) plan. The Board shall provide a link to the
399 vendor Internet website.

400 Section 20. Rules. The Department shall adopt rules and regulations, in accordance with
401 the Massachusetts Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), that may be
402 necessary to

403 implement this Act.

404 Section 21. Delayed implementation. If the Board does not obtain adequate funds to
405 implement the Program within the time frame set forth under Section 14 of this Act, the Board
406 may delay the implementation of the Program.

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