

HOUSE No. 1143

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>1/16/2025</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>2/3/2025</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/3/2025</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/3/2025</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>2/3/2025</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2025</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/3/2025</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>3/6/2025</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>3/6/2025</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>3/6/2025</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>3/6/2025</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>3/6/2025</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/24/2025</i>
<i>Brandy Fluker-Reid</i>	<i>12th Suffolk</i>	<i>4/17/2025</i>

HOUSE No. 1143

By Representative Donato of Medford, a petition (accompanied by bill, House, No. 1143) of Paul J. Donato and others 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-Fourth General Court
(2025-2026)**

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 General Law is hereby amended by inserting after Section
2 35I the following new section:

3 Section 35I 1/2.

4 (a) Definitions. Unless the context requires a different meaning or as expressly provided
5 in this Section, all terms shall have the same meaning as when used in a comparable context in
6 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 (b) 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 (c) Massachusetts Secure Choice Savings Program Fund.

42 (1) 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 (2) 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 (d) Massachusetts Secure Choice Administrative Fund. The Massachusetts Secure Choice
56 Administrative Fund ("Administrative Fund") is created as a nonappropriated, separate and apart
57 trust fund in the State Treasurer's Office. The Board shall use moneys in the Administrative
58 Fund to pay for administrative expenses it incurs in the performance of its duties under this Act.
59 The Administrative Fund may receive any grants or other moneys designated for administrative
60 purposes from the State, or any unit of federal or local government, or any other person, firm,
61 partnership, or corporation. Any interest earnings that are attributable to moneys in the
62 Administrative Fund must be deposited into the Administrative Fund.

63 (e) Composition of the Board. There is created the Massachusetts Secure Choice Savings
64 Board.

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

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

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

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

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

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

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

73 (2) 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 (3) 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 (4) 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 (5) 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 (f) 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 (g) Duties of the Board. In addition to the other duties and responsibilities stated in this
97 Act, the Board shall:

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

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

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

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

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

104 (v) ensures the portability of benefits.

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

107 (3) 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 (4) 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 (5) 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 (6) 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 (7) 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 (8) 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 (9) Design and establish the process for enrollment under Section 14 of this Act,
132 including the default contribution rate, account type, investment option, and automatic escalation
133 rate. The Board shall also design and establish the process by which an employee can:

134 (i) 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 (10) Evaluate and establish the process by which an individual may voluntarily enroll in
138 and make contributions to the Program.

139 (11) Accept any grants, appropriations, or other moneys from the Commonwealth, any
140 unit 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 (12) 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 (13) 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.

156 (14) Allocate administrative fees to individual retirement accounts in the Program on a
157 pro rata basis.

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

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

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

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

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

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

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

177 management system is in place to monitor the risk levels of the Program and Fund portfolio, to
178 ensure that the risks taken are prudent and properly managed, to provide an integrated process
179 for overall risk management, and to assess investment returns as well as risk to determine if the
180 risks taken are adequately compensated compared to applicable performance benchmarks and
181 standards. The Board shall consider the statement of investment policy and any changes in the
182 investment policy at a public hearing.

183 (i) Investment firms.

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

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

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

198 (j) Investment options.

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

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

205 (i) a conservative principal protection fund;

206 (ii) a growth fund;

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

215 (iv) an annuity fund.

216 (k) Intergovernmental Collaboration, Data Sharing, and Multistate Agreements.

217 (1) The Board may enter into an intergovernmental agreement or memorandum of
218 understanding with the State and any agency of the State to receive outreach, technical
219 assistance, enforcement and compliance services, collection or dissemination of information

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

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

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

233 (1) Employer and employee information packets and disclosure forms.

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

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

240 (i) the benefits and risks associated with making contributions to the Program;

241 (ii) the mechanics of how to make contributions to the Program;

242 (iii) how to opt out of the Program;

243 (iv) how to participate in the Program with a level of employee contributions other than
244 the default contribution rate.

245 (v) the process for withdrawal of retirement savings;

246 (vi) how to obtain additional information about the Program;

247 (vii) that employees seeking financial advice should contact financial advisors, that
248 participating employers are not in a position to provide financial advice, and that participating
249 employers are not liable for decisions employees make pursuant to this Act;

250 (viii) that the Program is not an employer-sponsored retirement plan; and

251 (ix) that the Program Fund is not guaranteed by the Commonwealth.

252 (3) The employee information packet shall also include a form for an employee to note
253 his or her decision to opt out of participation in the Program or elect to participate with a level of
254 employee contributions other than the default rate set by the Board.

255 (4) Participating employers shall supply the employee information packet to employees
256 after the employer has registered for the Program. Participating employers shall supply the
257 employee information packet to new employees at the time of hiring, and new employees may
258 opt out of participation in the Program or elect to participate with a level of employee
259 contributions other than the default contribution rate at that time.

260 (m) Program implementation and enrollment. The Program shall be implemented, and
261 enrollment of employees shall begin, within 24 months after the effective date of this Act. The
262 provisions of this Section shall be in force after the Board opens the Program for enrollment.

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

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

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

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

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

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

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

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

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

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

295 (o) Duty and liability of the Commonwealth.

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

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

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

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

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

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

314 (p) Duty and liability of participating employers.

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

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

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

323 (q) Audit and reports.

324 (1) The Board shall annually submit:

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

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

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

341 (r) Penalties.

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

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

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

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

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

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

358 requirements; and

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

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

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

372 (r)(1) above.

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

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

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

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

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

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

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