HOUSE DOCKET, NO. 895 FILED ON: 1/13/2025

HOUSE . . . . . No. 1226

The Commonwealth of Massachusetts

PRESENTED BY:

Meghan K. Kilcoyne

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 relative to secure choice retirement savings plan.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Meghan K. Kilcoyne	*12th Worcester*	*1/13/2025*
Paul McMurtry	*11th Norfolk*	*2/26/2025*
Michael D. Brady	*Second Plymouth and Norfolk*	*3/14/2025*

HOUSE DOCKET, NO. 895 FILED ON: 1/13/2025

HOUSE . . . . . No. 1226

By Representative Kilcoyne of Clinton, a petition (accompanied by bill, House, No. 1226) of Meghan K. Kilcoyne and Paul McMurtry for legislation to establish secure choice retirement savings plans. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act relative to secure choice retirement savings plan.

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

SECTION 1. Chapter 29 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 64E the following new sections:-

Section 64F. Definitions

For the purposes of this section, the following definitions shall apply:

"Board" means the Secure Choice Retirement Savings Board

"Eligible employee", a person who is employed by an eligible employer and who for any calendar year has provided (or is expected to provide) 750 or more hours of service to the eligible employer, with eligibility continuing even if service in later years is less than 750 hours. The term does not include: (i) any employee who is an "active participant: as described in IRC Section 219(g)(5), without regard to the exclusions for plans described in IRC Section 457(b); (ii) any employee who is enrolled in a payroll deduction IRA maintained or offered by the

employee's employer; (iii) Any employee who is covered by a collective bargaining agreement that does not provide for participation in the IRAP; (iv) Any employee who has not attained the age of 18 before the beginning of the calendar year.

"Eligible employer", a person or entity engaged in a specific business, industry, profession, trade, or other enterprise in the Commonwealth, whether for profit or not for profit excluding the federal government, the Commonwealth, any county, any municipality, or any of the Commonwealth's units or instrumentalities, with the exception that the Commonwealth is deemed an eligible employer with regard to Personal Care Attendants, Family Child Care Providers, and other direct or indirect employees of the Commonwealth, including a joint relationship, who are not eligible to participate in a public employee pension fund within the Commonwealth. The term does not include any employer that has not been in business at all during the preceding calendar year.

"Participating employer", an eligible employer that provides a payroll deposit retirement savings arrangement provided for by this title for eligible employees.

"Payroll deduction IRA", an arrangement by which an employer makes contributions on behalf of participating employees by remitting a specified portion of the employee's pay to an IRA at the same time and manner as other payroll deductions.

"IRAP", the Secure Choice Individual Retirement Account Program.

"MERP", the Secure Choice Multiple-Employer Retirement Account Program.

"ERISA", the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.

"Code" or "IRC", the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1 et seq.

"PRIM Board", the Massachusetts Pension Reserves Investment Management Board.

"Qualified Plan", any plan described in IRC Sections 401(a), 403(a), 403(b), or 457(b).

"IRA", any account of annuity described in IRC Section 408(a) or 408 (b).

Section 64G. Responsibilities of Eligible Employers and Exemptions

(a) Each eligible employer is required to automatically enroll its eligible employees in the IRAP.

(b) An eligible employer is exempted from subsection a to the extent that it offers each of its eligible employees the opportunity to participate in a qualified plan or a payroll deduction IRA.

Section 64H. IRAP

(a) The Board is responsible for developing and establishing the IRAP.

(b) The IRAP shall:

(i) Allow eligible individuals employed for compensation in this state to contribute to an individual account established under the program through payroll deductions

(ii) Provide for automatic enrollment of employees and allow employees to opt out of the plan.

(iii) Have a default contribution rate set by the Board by rule.

(iv) Offer default escalation and contribution levels that can be increased or decreased within the limits allowed by the IRC.

(v) Pool accounts established under the plan for investment purposes.

(vi) Be professionally managed.

(vii) Allow the use of private sector partnerships to administer and invest the contributions to the plan under the supervision and guidance of the Board. Monies in the IRAP may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with the PRIM Board or private money managers, or both, as determined by the Board.

(viii) Maintain a separate trust.

(ix) Provide for the program's administration in an efficient and cost-effective manner.

(x) Be structured so that it is not governed by ERISA.

(xi) Provide the Board with the authority to establish such rules and regulations as it considers appropriate for the administration of the IRAP, including with regard to the selection of investment options, the manner of safeguarding contributions and other plan assets, the payment of administrative expenses, and the purchase of insurance.

(xii) Provide for the manner of the payment of benefits, which may include annuities and/or lump sums.

Section 64I. MERP

(a) The Board is responsible for developing and establishing the MERP.

(b) The MERP shall:

(i) Be qualified under IRC Section 401(a).

(ii) Be a profit sharing plan as described in IRC Section 401(a)(27)(B).

(iii) Be a defined contribution plan as described in IRC Section 414(i).

(iv) Be governed by ERISA.

(v) Be a multiple employer plan permitting the voluntary participation of employers with employees working in the Commonwealth.

(vi) Permit employee contributions, as provided in IRC Section 401(k), through payroll deductions.

(vii) Allow for employer contributions as matching contributions, fixed contributions, or a combination of the two.

(viii) Have a default, automatic contribution rate for both employees and employers.

(ix) Offer default escalation of contribution levels that can be increased or decreased within the limits allowed by the IRC.

(x) Pool accounts established under the plan for investment.

(xi) Be professionally managed.

(xii) Allow the use of private sector partnerships to administer and invest the contributions to the plan under the supervision and guidance of the Board. Monies in the IRAP

may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with the PRIM Board of private money managers, or both, as determined by the Board.

(xiii) Maintain a separate trust.

(xiv) Provide for the Plan's administration in an efficient and cost-effective manner.

(xv) Designate the Board as the named fiduciary, within the meaning of ERISA Section 402(a), and provide that the Board may delegate fiduciary authority as permitted under ERISA.

(xvi) Designate the Board as the plan sponsor and administrator, as defined under ERISA Section (3)(16).

(xvii) Provide the Board with the authority to establish such rules and regulations as it considers appropriate for the administration of the MERP, including with regard to the selection of investment options, the manner of safeguarding contributions and other plan assets, the payment of the administrative expenses, and the purchase of insurance.

(xviii) Provide for the manner of the payment of benefits, which may include annuities and/or lump sums.

Section 64J. Composition of the Board

(a) There is hereby created within the government of the Commonwealth the Secure Choice Retirement Savings Board, which shall initially consist of seven members, with the Treasurer serving as chair, as follows:

i. The Treasurer, or his or her designee

ii. The Secretary of Administration and Finance, or his or her designee

iii. An individual with retirement savings or investment expertise appointed by the Senate President

iv. A small business representative appointed by the governor

v. Two public members appointed by the Treasurer

vi. An employee representative appointed by the Speaker of the House

(b) Within one year of the date the Board opens the IRAP and MERP for participation, the Treasurer will remain as Board member and will conduct elections to elect Representative Board members to represent the interest of participating employers and employees. The Treasurer will conduct an election among participating employees to elect four of their number to be Representative Board members from among themselves to represent the interests of participating employers solely with respect to the MERP. These additional Board members shall be designated as Representative Board Members, and must continue to participate in the Plan in order to serve on the Board. If any such Representative Board members ceases to participate in the Plan, his or her eligibility to continue as a Representative Board member shall cease as well, and the Board shall make arrangements to hold an election to elect a replacement. The terms of Representative Board members shall be for three years.

Section 64K. Risk Management

The Board shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. The investment policy or policies shall mitigate risk by maintaining a balanced investment portfolio that provides assurance that no single investment or class of investments will have a disproportionate impact on the total

portfolio. The policy and policies shall also address hedging against longevity risk through the purchase of annuities or other longevity hedging products. The risk management system is in place to monitor the risk levels of the Secure Choice Retirement Savings Plan investment portfolios and ensure that the risks taken are prudent and properly managed. The Board shall be allowed to decide investment policy for each program while making different investment decisions with each program within these guidelines. The Board shall decide whether to offer a choice of investment vehicles to participants.

Section 64L. Benefit Amount

Interest, earnings, and/or losses, and administrative expenses shall be allocated to program accounts as prescribed by the Board. An individual's retirement savings benefit under the program shall be an amount equal to the balance in the individual's program account on the date the retirement savings benefit becomes payable. The Commonwealth shall have no liability for the payment of any benefit to any participant in either the IRAP or the MERP.

Section 64M. Board Duties

(a) In addition to any duties described above, the Board shall have the power and the authority to do all of the following:

(1) Establish one or more payroll deposit retirement savings arrangements for use by participating employers.

(2) Employ staff and/or appoint record keeper, investment managers, custodians, trustees, consultants, attorneys, and such other advice and assistance as may necessary or desirable to administer the Plan, and determine the duties of the Plan administer and other staff as necessary

and set their compensation. The Board shall have the authority to make rules and regulations not inconsistent with this Act.

(3) Make provisions for the payment of costs of administration and operation of the trusts.

(4) Evaluate and establish the process by which an eligible employee may contribute a portion of his or her salary or wages to the Plan for automatic deposit of those contributions. This may include, but is not limited to, existing processes and arrangements used for the deposit and administration of tax required to be deducted and withheld relating to the collection of income tax at source on wages or for the deposit of tax required to be paid under the unemployment insurance system. This also may include, but is not limited to, financial services companies and their-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or other arrangements authorized by this title.

(5) Evaluate and establish the process by which a participating employee is able to contributions for the benefit of its employees to the MERP.

(6) Design and establish the process for the enrollment of Plan participants.

(7) Procure insurance in connection with the property, assets, or activities of the trust, including private underwriting and/or reinsurance, to manage risk and insure the retirement savings rate of return.

(8) The Commonwealth shall procure insurance indemnifying each member of the Board from personal loss or liability resulting from a member's actions or inaction as a member of the Board, to the extent permitted by ERISA and other governing law.

(9) Set default, minimum and maximum contribution levels as well as auto-escalation policies whereby participating employees' contributions automatically escalate from year to year until they each a maximum contribution rate unless the employee changes his or her contribution rate. Participants will be immediately bested in their account balances.

(10) Accept contributions from participating employers for the benefit of their employees. These contributions shall be in cash or cash equivalents only; securities shall not be accepted as contributions.

(11) Design and establish the process for the enrollment of those self-employed individuals and employers who do not qualify as eligible employers who choose to voluntarily participate in the MERP.

(12) Arrange for collective, common, and pooled investment of assets of the Plan, including investments in conjunction with other funds with which those assets are permitted to be collectively invested, with a view to savings costs through efficiencies and economies of scale.

(13) Allocate administrative fees to each participating employee's account balance on a pro rata basis, or such other basis as the Board determines to be fair and equitable. The Board shall keep annual administrative expenses low, but in no event shall they exceed one percent of the total trust balance.

(14) Explore and establish investment options that offer employees ways to secure retirement income without incurring debt or liabilities to the state.

(15) Exercise discretionary authority with regard to:

i. If necessary, making determinations of the eligibility of an employer, employee, or other individual to participate in the Plan;

ii. Making factual determinations regarding the Plan;

iii. Interpreting the Plan's governing documents; and

iv. Such other matters as are necessary for the administration of the Plan.

(b) The Board shall publish separate annual audited financial reports, prepared in accordance with generally accepted accounting principles, on the operations of the IRAP and the MERP. The annual audit shall be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(c) The Board shall ensure that all reports required under the Code and ERISA are properly filed for the IRAP and MERP.

Section 64N. Employee Information Packet

Prior to opening either the IRAP or the MERP for enrollment, the Board shall design and disseminate to employers an employee information packet for such program. The packet shall include background information on the programs and appropriate disclosures for employees.

Section 64O. Disclosure Form

The disclosures shall include, but not be limited to, all of the following:

(1) The benefits and risks associated with participating in the relevant program.

(2) The mechanics of how to join the respective program.

(3) How to opt out of the program.

(4) The process for applying for payment of retirement benefits.

(5) How to obtain additional information.

In addition, the disclosure form shall clearly articulate the following:

(1) Employers are not liable for decision employees make pursuant to this bill.

(2) The Plan fund is not guaranteed by the Commonwealth.

Section 64P. Enforcement

(a) The Massachusetts Attorney General shall have the power to enforce the provisions of this Act.

(b) The Attorney General may impose, after due process, penalties against eligible employers for failure to comply with section 64g of Section 12 of up to $250 per eligible employee. Proceeds for such penalties, after deducting enforcing expenses, shall be deposited for the benefit of the IRAP.

(c) The Attorney General shall impose, after due process, penalties against employers equal to lost earnings and interest on contributions made alter than the deadlines prescribed by the Board. The Attorney General shall prescribe a methodology for calculating such lost earnings

and interest. Proceeds for such penalties shall be deposited for the benefit of the Trust and credited to the accounts of the affected employee(s) on a pro rata basis.

Section 64Q. Liability

(a) Employers shall not have any liability for an employee's decision to participate in, or opt out of, the Secure Choice Retirement Savings Plan.

(b) A participating employer shall not be a fiduciary, or considered a fiduciary, with regard to the operation of the MERP, except with respect to contribution amounts for remitted in a timely fashion. Participating employers shall not bear responsibility for the administration, investment, or investment performance of the IRAP or the MERP. Such employers shall not be liable with regard to investment returns, Plan design, and benefits paid to Plan participants.

Section 64R. Savings Clause

The provision of this Act are severable. In the event that portions of this Act are declared invalid or unenforceable, the remaining terms and provisions that are not affected thereby shall remain in force and effect.

Section 64S. Taxes

The IRAP and MERP are exempt from Massachusetts securities law and are tax exempt under the law of the Commonwealth.

SECTION 2. (a) The effective date of this act shall be January 1, 2020.

(b) Notwithstanding the forgoing, Section 64G shall be effective as follows:

i. For each eligible employer with 100 or more eligible employees, three months after the Board opens the Plan for enrollment.

ii. For each eligible employer with 50 or more but fewer than 100 eligible employees, six months after the Board opens the Plan for enrollment.

iii. For each eligible employer with fewer than 50 eligible employees, nine months after the Board opens the Plan for enrollment.

iv. The Board may delay these effective dates in its discretion for no more than 12 additional months.