

HOUSE No. 1075

The Commonwealth of Massachusetts

PRESENTED BY:

Tram T. Nguyen

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 establish the Massachusetts secure choice retirement program and expand the Massachusetts CORE plan to all employers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>David Biele</i>	<i>4th Suffolk</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>

<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>

HOUSE No. 1075

By Ms. Nguyen of Andover, a petition (accompanied by bill, House, No. 1075) of Tram T. Nguyen and others for legislation to establish the Massachusetts secure choice retirement program and expand the Massachusetts CORE plan to all employers. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to establish the Massachusetts secure choice retirement program and expand the Massachusetts CORE plan to all employers.

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. Section 64E of chapter 29 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out subsection (a)

3 SECTION 2. Said section 64E of chapter 29, as so appearing, is hereby further amended
4 by striking out the words “not for profit” in the first sentence of the first paragraph of subsection
5 (c)

6 SECTION 3. Said section 64E of chapter 29, as so appearing, is hereby further amended
7 by striking out the words “not for profit” in the first, third, and fourth sentences of the second
8 paragraph of subsection (c)

9 SECTION 4. Said section 64E of chapter 29, as so appearing, is hereby further amended
10 by striking out the words “not for profit” in the fourth sentence of the first paragraph of
11 subsection (d)

12 SECTION 5. Said section 64E of chapter 29, as so appearing, is hereby further amended
13 by striking out the words “not for profit” in the first sentence of subsection (e)

14 SECTION 6. Said section 64E of chapter 29, as so appearing, is hereby further amended
15 by striking out the words “of the non profit community” and “be currently employed by non for
16 profit corporations” in the second sentence of subsection (e)

17 SECTION 7. Chapter 29 of the Massachusetts General Laws, as appearing in the 2018
18 Official Edition, is hereby amended by inserting after Section 64E the following sections:

19 Section 64F Massachusetts Secure Choice Program

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

21 “Administrative Fund” means the Massachusetts Secure Choice Administrative Fund
22 described in Section 10.

23 “Board” means the Massachusetts Secure Choice Board.

24 “Covered Employee” means an individual who is employed by a Covered Employer,
25 who has wages or other compensation that is allocable to the State, and who is at least [18 years
26 of age. “Covered Employee” does not include –

27 (A) Any employee covered under the federal Railway Labor Act (45 U.S.C. sec. 151).

28 (B) Any employee on whose behalf an employer makes contributions to a Taft-Hartley
29 multiemployer pension trust fund.

30 (C) Any individual who is an employee of the Federal government, the State or any other
31 State, any country or municipal corporation, or any of the State's or any other State's units or
32 instrumentalities.

33 "Covered Employer" means a person or entity engaged in a business, industry,
34 profession, trade, or other enterprise in the State, whether for profit or not for profit, excluding
35 the federal government, the state, any county, any municipal corporation, or any of the state's
36 units or instrumentalities; and provided that "Covered Employer" does not include an employer
37 that maintains a Specified Tax-Favored Retirement Plan for its employees or has done so
38 effective in form and operation at any time within the current or two preceding calendar years. If
39 an employer does not maintain a Specified Tax-Favored Retirement Plan for a portion of a
40 calendar year ending on or after the effective date of this title and adopts such a plan effective for
41 the remainder of that calendar year, the employer is exempt from "Covered Employer" status for
42 that remainder of the year.

43 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29
44 United States Code 1001 et seq.).

45 "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended (Title
46 26 of the United States Code).

47 "IRA" means a traditional or Roth individual retirement account or individual retirement
48 annuity under section 408(a), 408(b), or 408A of the Internal Revenue Code.

49 "Participant" means an individual who is contributing to an IRA under the Program or
50 has an IRA account balance under the Program.

51 “Participating Employer” means a Covered Employer that provides for Covered
52 Employees a Payroll Deduction IRA provided for by this title.

53 “Payroll Deduction IRA Arrangement” or “Payroll Deduction IRA” means an
54 arrangement by which an employer allows employees to contribute to an IRA by means of
55 payroll deduction.

56 “Program” or “Massachusetts Secure Choice Program” means the retirement savings
57 program established by this title.

58 “Roth IRA” means a Roth individual retirement account or individual retirement annuity
59 under section 408A of the Internal Revenue Code.

60 “Specified Tax-Favored Retirement Plan” means a retirement plan that is tax-qualified
61 under or is described in and satisfies the requirements of subsection 401(a), 401(k), 403(a),
62 403(b), 408(k)(Simplified Employee Pension), or 408(p)(SIMPLE-IRA) of the Internal Revenue
63 Code.

64 “Total Fees and Expenses” means all fees, costs, and expenses, including but not limited
65 to administrative expenses, investment expenses, investment advice expenses, accounting costs,
66 actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance
67 annuitization costs, and other miscellaneous costs.

68 “Traditional IRA” means a traditional individual retirement account or traditional
69 individual retirement annuity under section 408(a) or (b) of the Internal Revenue Code.

70 “Trust” means the trust in which the assets of the Program are held. Where applicable,
71 except as may be otherwise specified, references throughout this title to the Program generally

72 are intended to refer also to the Trust (including the assets, facilities, costs and expenses,
73 receipts, expenditures, activities, operations, administration, or management).

74 “Massachusetts Secure Choice Administrative Fund” or “Fund” is the fund described in
75 Section 10, below, that is established for the sole purpose of paying the administrative costs and
76 expenses of the Board and the Program.

77 2. Establishment of Board

78 (1) The Massachusetts Secure Choice Board is established in the Office of the State
79 Treasurer.

80

81 (2) The Board will consist of the following [nine] members, with the State Treasurer or
82 the designee of the State Treasurer serving as chair:

83

84 (a) The State Treasurer or the designee of the State Treasurer.

85 (b) An individual, appointed by the Governor, who has a favorable reputation for skill,
86 knowledge, and experience in the field of retirement saving and investments appointed by the
87 Governor.

88 (c) An individual, appointed by the Governor, who has a favorable reputation for skill,
89 knowledge, and experience relating to small business.

90 (d) An individual, appointed by the Speaker of the House, who is a representative of an
91 association representing employees or who has a favorable reputation for skill, knowledge, and
92 experience in the interests of employees in retirement saving.

93 (e) An individual, appointed by the President of the Senate, who has a favorable
94 reputation for skill, knowledge, and experience in the interests of employers in retirement saving.

95 (f) A retired individual, appointed by the Speaker of the House of Representatives, to
96 be a representative of the interests of retirees.

97 (g) An individual, appointed by the President of the Senate, who has a favorable
98 reputation for skill, knowledge, and experience in retirement investment products or retirement
99 plan designs.

100 (h) A member of the House of Representatives appointed by the Speaker of the House
101 of Representatives to be a nonvoting advisory member of the Board.

102 (i) A member of the Senate appointed by the President of the Senate to be a nonvoting
103 advisory member of the Board.

104

105 (3) The Governor, the Senate President, and the Speaker of the House shall first make
106 appointments to the Board for terms of office beginning no later than July 1, 2021

107

108 (4) Members of the Board appointed by the Governor, the Senate President, and the
109 Speaker of the House shall serve at the pleasure of the appointing authority.

110

111 (5) The term of office of each member of the Board is four years. A member is
112 eligible for reappointment. If there is a vacancy for any reason, the appropriate appointing
113 authority shall make an appointment to become immediately effective for the unexpired term.

114 (6) All members of the Board shall serve without compensation, and shall be
115 reimbursed from the Administrative Fund for necessary travel expenses incurred in carrying out
116 their Board duties.

117

118 (7) A majority of the voting members of the Board constitutes a quorum for the
119 transaction of business.

120 3. Powers, Authority, and Duties of the Board.

121 (1) The Board, subject to its authority and fiduciary duty, shall design, develop, and
122 implement the Program, and, to that end, may conduct market, legal, and feasibility analyses.

123

124 (2) The Board shall have the powers, authority, and duties to --

125 (a) Establish, implement, and maintain the Program.

126 (b) Cause the Program, Trust, and arrangements and accounts established under the
127 Program to be designed, established, and operated --

128 (1) In accordance with best practices for retirement saving vehicles;

129 (2) To encourage participation, saving, sound investment practices, and appropriate
130 selection of default investments,

131 (3) To maximize simplicity and ease of administration for Covered Employers,

132 (4) To minimize costs, including by collective investment and economies of scale,

133 (5) To promote portability of benefits, and

134 (6) To avoid preemption of the Program by Federal law.

135 (c) Arrange for collective, common, and pooled investment of assets of the Program
136 and Trust, including investments in conjunction with other funds with which these assets are
137 permitted to be collectively invested, with a view to saving costs through efficiencies and
138 economies of scale.

139 (d) Develop and disseminate educational information designed to educate participants
140 and citizens about the benefits of planning and saving for retirement and information to help
141 them decide the level of participation and savings strategies that may be appropriate for them,
142 including information in furtherance of financial capability and financial literacy.

143 (e) If necessary, determine the eligibility of an employer, employee, or other individual
144 to participate in the Program.

145 (f) Adopt rules and regulations it deems necessary or advisable for the implementation
146 of this title and the administration and operation of the Program consistent with the Internal
147 Revenue Code and regulations thereunder, including to ensure that the Program satisfies all
148 criteria for favorable Federal tax treatment and complies, to the extent necessary, with any other
149 applicable Federal or State law.

150 (g) Arrange for and facilitate compliance by the Program or arrangements established
151 under the Program with all applicable requirements for the Program under the Internal Revenue
152 Code, including requirements for favorable tax treatment of the IRAs, and under any other
153 applicable Federal or State law and accounting requirements, including using its best efforts to
154 implement procedures minimizing the risk that Covered Employees will contribute more to an
155 IRA than the amount they are eligible under the Internal Revenue Code to contribute to the IRA
156 on a tax-favored basis, and otherwise providing or arranging for assistance to Covered
157 Employers and Covered Employees in complying with applicable law and tax-related
158 requirements in a cost-effective manner. The Board may establish any processes that the Board
159 reasonably deems to be necessary or advisable to verify whether an employer is a Covered
160 Employer (including reference to on-line data and possible use of questions in employer State tax
161 filings), consistent with the objective of avoiding to the fullest extent practicable any
162 requirement that an employer that is not a Covered Employer register with the Program or take
163 other action to demonstrate that it maintains a Specified Tax-Favored Retirement Plan or is
164 exempt for other reasons from being treated as a Covered Employer.

165 (h) Employ or retain program administrator, executive director, staff, trustee,
166 recordkeeper, investment managers, investment advisors, other administrative, professional,
167 expert advisors and service providers, none of whom shall be members of the Board and all of
168 whom shall serve at the pleasure of the Board, and determine their duties and compensation. The
169 Board may authorize the executive director and other officials to oversee requests for proposals
170 or other public competitions and enter into contracts, as described in paragraph (m) of this
171 subsection (2), on behalf of the Board or conduct any business necessary for the efficient
172 operation of the Board.

173 (i) Establish procedures for the timely and fair resolution of participant and other
174 disputes related to accounts or program operation.

175 (j) Develop and implement an investment policy that defines the Program's investment
176 objectives, consistent with the objectives of the Program, and that provides for policies and
177 procedures consistent with those investment objectives. The Board shall designate appropriate
178 default investments that include a mix of asset classes, such as target date and balanced funds.
179 The Board shall seek to minimize participant fees and expenses of investment and
180 administration. The Board shall strive to design and implement investment options available to
181 holders of accounts established as part of the Program and other Program features that are
182 intended to achieve maximum possible income replacement balanced with an appropriate level
183 of risk in an IRA-based environment consistent with the investment objectives under the policy.
184 The investment options may encompass a range of risk and return opportunities and allow for a
185 rate of return commensurate with an appropriate level of risk in view of the investment
186 objectives under the policy. The menu of investment options shall be determined taking into
187 account the nature and objectives of the Program, the desirability (based on behavioral research
188 findings) of limiting investment choices under the Program to a reasonable number, and the
189 extensive investment choices available to Participants in the event that they roll over to an IRA
190 outside the Program. In accordance with paragraph (h) of this subsection (2), the Board, to the
191 extent it deems it necessary or advisable, in its discretion, in carrying out its responsibilities and
192 exercising its powers under this and other paragraphs and provisions of this title, shall employ or
193 retain appropriate entities or personnel to assist or advise it or to whom to delegate the carrying
194 out of such responsibilities and exercise of such powers.

195 (k) Discharge its duties and see to it that the members of the Board discharge their
196 duties as fiduciaries with respect to the Program solely in the interest of the Participants as
197 follows:

198 (i) for the exclusive purpose of providing benefits to Participants and defraying
199 reasonable expenses of administering the Program; and

200 (ii) with the care, skill, prudence, and diligence under the circumstances then
201 prevailing that a prudent person acting in a like capacity and familiar with those matters would
202 use in the conduct of an enterprise of a like character and with like aims.

203 (l) Cause expenses incurred to initiate, implement, maintain, and administer the
204 Program to be paid from contributions to, or investment returns or assets of, the Program or other
205 money collected by or for the Program or pursuant to arrangements established under the
206 Program to the extent permitted under Federal and State law.

207 (m) Collect application, account, or administrative fees and to accept any grants, gifts,
208 legislative appropriation, loans, and other moneys from the State, any unit of Federal, State, or
209 local government, or any other person, firm, or entity to defray the costs of administering and
210 operating the Program.

211 (n) Make and enter into competitively procured contracts, agreements, or
212 arrangements, to collaborate and cooperate with, and to retain, employ, and contract with or for
213 any of the following to the extent necessary or desirable, for the effective and efficient design,
214 implementation, and administration of the Program consistent with the purposes set forth in this
215 title and to maximize outreach to Covered Employers and Covered Employees:

216 (i) Services of private and public financial institutions, depositories, consultants,
217 actuaries, counsel, auditors, investment advisers, investment administrators, investment
218 management firms, other investment firms, third-party administrators, other professionals and
219 service providers, and State public retirement systems.

220 (ii) Research, technical, financial, administrative, and other services.

221 (iii) Services of other State agencies to assist the Board in the exercise of its powers
222 and duties.

223 (o) Develop and implement an outreach plan to gain input and disseminate information
224 regarding the Program and retirement savings in general, including timely information to
225 Covered Employers regarding the Program and how it applies to them, with special emphasis on
226 their ability at any time to sponsor a Specified Tax-Favored Retirement Plan which would
227 exempt them from any responsibilities under the Program.

228 (p) Cause moneys to be held and invested and reinvested under the Program.

229 (q) Ensure that all contributions to IRAs under the Program may be used only to (i) pay
230 benefits to Participants under the Program, (ii) pay the cost of administering the Program, and
231 (iii) make investments for the benefit of the Program, and that no assets of the Program or Trust
232 are transferred to the general fund of the State or to any other fund of the State or are otherwise
233 encumbered or used for any purpose other than those specified in this subsection (2)(p).

234 (r) Make provision for the payment of costs of administration and operation of the
235 Program and Trust.

236 (s) Consider whether or not procedures should be issued to allow employers that are
237 not Covered Employers because they are exempt from Covered Employer status to voluntarily
238 participate in the Program by automatically enrolling their employees, taking into account,
239 among other considerations, the potential legal consequences and the degree of employer
240 demand to participate or facilitate participation by employees.

241 (t) Evaluate the need for, and procure if and as needed, insurance against any and all
242 loss in connection with the property, assets, or activities of the Program. Evaluate the need for,
243 and procure if and as deemed necessary, pooled private insurance.

244 (u) Indemnify, including procurement of insurance if and as needed for this purpose,
245 each member of the Board from personal loss or liability resulting from a member's action or
246 inaction as a member of the Board.

247 (v) Collaborate with, and evaluate the role of, financial advisors or other financial
248 professionals, including in assisting and providing guidance for Covered Employees.

249 (w) Carry out its powers and duties under the Program pursuant to this title and
250 exercise any and all other powers as are appropriate for the effectuation of the purposes,
251 objectives, and provisions of this title pertaining to the Program.

252

253 (3) A Board member, program administrator, and other staff of the Board shall not --

254 (a) Directly or indirectly have any interest in the making of any investment under the
255 Program or in gains or profits accruing from any such investment.

256 (b) Borrow any Program-related funds or deposits, or use any such funds or deposits in
257 any manner, for himself or herself or as an agent or partner of others.

258 (c) Become an endorser, surety, or obligor on investments made under the Program.

259

260 4. Requirements for the Massachusetts Secure Choice Program.

261 The Program developed and established by the Board under this title must –

262 (a) Allow eligible individuals in the State to voluntarily choose whether or not to
263 contribute to an IRA under the Program, including allowing Covered Employees in the State the
264 choice to contribute to an IRA through payroll deduction under the Program.

265

266 (b) Require each Covered Employer to offer its employees the voluntary choice
267 whether or not to contribute to a Payroll Deduction IRA by automatically enrolling them in the
268 Payroll Deduction IRA with the opportunity to opt out.

269

270 (c) Provide that the IRA to which contributions are made will be a Roth IRA, except
271 that the Board shall have the authority at any time, to add an option for all participants to
272 affirmatively elect to contribute to a traditional IRA as an alternative to the Roth IRA.

273

274 (d) Provide that, unless otherwise specified by a Covered Employee, the Covered
275 Employee shall automatically contribute 6% of the Covered Employee's salary or wages to the
276 Program or may elect to opt out of the Program or contribute at a higher or lower rate (expressed
277 as a percentage of salary or wages), subject in all cases to the IRA contribution dollar limits
278 applicable under the Internal Revenue Code. The Board is authorized to change the default
279 contribution rate in its discretion.

280

281 (e) Provide on a uniform basis, if and when the Board so determines, in its discretion,
282 for annual increases of each Participant's contribution rate, by not more than 1% of salary or
283 wages per year up to a maximum of 10%. Any such increases shall apply to Participants, as
284 determined by the Board, by default or only if initiated by affirmative Participant election, in
285 either case subject to the IRA contribution limits applicable under the Internal Revenue Code.

286 (f) Provide for direct deposit of contributions into investments under the Program.

287 (g) Be professionally managed.

288 (h) Permit no employer contributions by Covered Employers.

289 (i) Provide for reports on the status of each Participant's account to be provided to each
290 Participant at least annually.

291 (j) When possible and practicable, use existing employer and public infrastructure to
292 facilitate contributions, recordkeeping, and outreach and use pooled or collective investment
293 arrangements.

294 (k) Provide that each account holder owns the contributions to or earnings on amounts
295 contributed to his or her account under the Program and that the State and employers have no
296 proprietary interest in those contributions or earnings.

297 (l) Be designed and implemented in a manner consistent with Federal law to the extent
298 that it applies and consistent with the Program not being preempted by ERISA.

299 (m) Make provision for the participation in the Program of individuals who are not
300 employees, as provided in subsection 5(1), below.

301 (n) Keep Total Fees and Expenses as low as practicable and in any event each year not
302 in excess of 0.75 of one percent (75 basis points) of the total assets of the Program, except that
303 this limit shall not apply during a start-up period of three years beginning with the initial
304 implementation of the Program.

305 (o) Establish rules and procedures governing the distribution of funds from the
306 Program, including such distributions as may be permitted or required by the Program and any
307 applicable provisions of tax laws, with the objectives of maximizing financial security in
308 retirement, helping to protect spousal rights, and assisting Participants with the challenges of
309 decumulation of savings. The Board shall have the authority, in its discretion, to provide for one
310 or more reasonably priced distribution options to provide a source of fixed retirement income,
311 including income for life or for the Participant's life expectancy (or for joint lives and life
312 expectancies, as applicable).

313 (p) Establish rules and procedures promoting portability of benefits, including the
314 ability to make tax-free rollovers or transfers from IRAs under the Program to other IRAs or to

315 tax-qualified plans that accept such rollovers or transfers provided any roll-over is initiated by
316 participants and not solicited by agents or brokers.

317 5. Responsibilities of Covered Employers

318 (1) A covered employer satisfies its obligations to its eligible employees under this Act
319 by doing any one of the following:

320 a. Establishing an employer-sponsored retirement plan, such as a single-employer defined
321 benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match
322 Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA,
323 or becoming a contributing employer to a multiemployer pension plan described in Sec. 414(f) of
324 Title 26 of the United States Code;

325

326 b. Becoming a participating employer in the CORE plan as described in 29 MGL 64E; or

327

328 c. Automatically enrolling eligible employees in the Massachusetts Secure Choice
329 Program, as described in 29 MGL 64F.

330

331 (2) The Program developed and established by the Board under this title must provide
332 that, if a Covered Employer fails without reasonable cause to enroll a Covered Employee as
333 required under subsection 5(1) above:

334 (i) the Covered Employer shall be subject to a penalty equal to \$250 for each Covered
335 Employee for each calendar year or portion thereof during which the Covered Employee neither
336 was enrolled in the Program nor had elected out of participation in the Program; and the Covered
337 Employee or any appropriate official of the State may bring a civil action to require the Covered
338 Employer to enroll the Covered Employee and shall recover such costs and reasonable attorney's
339 fees as may be allowed by the court; and

340 (ii) for each calendar year beginning after the date on which a penalty has been assessed
341 with respect to a Covered Employee, \$500 for any portion of that calendar year during which the
342 Covered Employee continues to be unenrolled without electing out of participation in the
343 Program.

344 (3) No penalty shall be imposed under subsection 5(2) on any failure for which it is
345 established that the Covered Employer subject to liability for the penalty did not know that the
346 failure existed and exercised reasonable diligence to meet the requirements of paragraph 1 of this
347 subsection 5(1) above.

348 (4) No penalty shall be imposed under subsection 5(2) on any failure if (A) the Covered
349 Employer subject to liability for the penalty exercised reasonable diligence to meet those
350 requirements and (B) the Covered Employer complies with those requirements with respect to
351 each Covered Employee by the end of the 90-day period beginning on the first date the Covered
352 Employer knew, or exercising reasonable diligence would have known, that the failure existed.

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

356 (6) Provide that, if a Covered Employer fails to transmit a payroll deduction contribution
357 to the Program on the earliest date the amount withheld from the Covered Employee's
358 compensation can reasonably be segregated from the Covered Employer's assets, but not later
359 than the 15th day of the month following the month in which the Covered Employee's
360 contribution amounts are withheld from his or her paycheck, the failure to remit such
361 contributions on a timely basis shall be subject to the same sanctions as employer
362 misappropriation of employee wage withholdings and to the penalties specified in subsection
363 5(2), above.

364 6. Rules for the Massachusetts Secure Choice Program.

365 The Board shall adopt rules to implement the Program that --

366 (1) Establish the processes for enrollment and contributions to IRAs under the
367 Program, including withholding by Covered Employers of employee payroll deduction
368 contributions from wages and remittance for deposit to IRAs, automatic enrollment in Payroll
369 Deduction IRAs and opt-outs by Covered Employees, voluntary contributions by others,
370 including self-employed individuals and independent contractors, through payroll deduction or
371 otherwise, the making of default contributions using default investments, and participant
372 selection of alternative contribution rates or amounts and alternative investments from among the
373 options offered under the Program.

374

375 (2) Establish the processes for withdrawals, rollovers, and direct transfers from IRAs
376 under the Program in the interest of facilitating portability and maximization of benefits.

377

378 (3) Establish processes for phasing in enrollment of eligible individuals, including
379 phasing in enrollment of Covered Employees by size or type of Covered Employer, beginning
380 with the initial applicability date specified in this Act.

381 (4) Conduct outreach to individuals, employers, other stakeholders, and the public
382 regarding the Program. Specify the contents, frequency, timing, and means of required
383 disclosures from the Program to Covered Employees, Participants, other individuals eligible to
384 participate in the Program, Covered Employers, and other interested parties. These disclosures
385 shall include, but need not be limited to –

386

387 (a) The benefits associated with tax-favored retirement saving;

388 (b) The potential advantages and disadvantages associated with contributing to Roth
389 IRAs and, if applicable, traditional IRAs under the Program;

390 (c) The eligibility rules for Roth IRAs and, if applicable, traditional IRAs;

391 (d) That the individual (and not the employer, the State, the Board, any Board member
392 or other State official, or the Program) will be solely responsible for determining whether, and, if
393 so, how much, the individual is eligible to contribute on a tax-favored basis to an IRA;

394 (e) The penalty for excess contributions to IRAs and the method of correcting excess
395 contributions;

396 (f) Instructions for enrolling, making contributions, and opting out of participation;

397 (g) Instructions for opting out of each of the Roth IRA, the default contribution rate,
398 and the default investment if the Covered Employee prefers a traditional IRA (including the
399 possibility of contributing to a traditional IRA if offered as an option under the Program or,
400 whether or not offered under the Program, by means other than auto enrollment in payroll
401 deduction IRAs), a higher or lower contribution rate, or a different investment alternative;

402 (h) The potential availability of a saver's tax credit, including the eligibility conditions
403 for the credit and instructions on how to claim it;

404 (i) That employees seeking tax, investment, or other financial advice should contact
405 appropriate professional advisors, and that Covered Employers are not in a position to provide
406 such advice and are not liable for decisions individuals make in relation to the Program;

407 (j) That the Payroll Deduction IRAs are intended not to be employer-sponsored
408 retirement plans and that the Program is not an employer-sponsored retirement plan;

409 (k) The potential implications of account balances under the Program for the
410 application of asset limits under certain public assistance programs;

411 (l) That the account owner is solely responsible for investment performance, including
412 market gains and losses, and that IRA accounts and rates of return are not guaranteed by any
413 employer, the State, the Board, any Board member or State official, or the Program;

414 (m) Additional information about retirement and saving and other information
415 designed to promote financial literacy and capability (which may take the form of links to, or
416 explanations of how to obtain, such information), and

417 (n) How to obtain additional information about the Program.

418 (5) Nothing in this legislation prohibits the state from entering into an arrangement
419 with other governmental entities, including other states or their agencies or instrumentalities, to
420 implement this program.

421

422 7. Protection from Liability for Employers.

423 (1) A Covered Employer or other employer is not and shall not be liable for or bear
424 responsibility for --

425 (a) An employee's decision to participate in or opt out of the Program;

426 (b) Participants' or the Board's investment decisions;

427 (c) The administration, investment, investment returns, or investment performance of
428 the Program, including without limitation any interest rate or other rate of return on any
429 contribution or account balance, provided they played no role;

430 (d) The Program design or the benefits paid to Participants;

431 (e) Individuals' awareness of or compliance with the conditions and other provisions of
432 the tax laws that determine which individuals are eligible to make tax-favored contributions to
433 IRAs, in what amount, and in what time frame and manner;

434 (f) Any loss, failure to realize any gain, or any other adverse consequences, including
435 without limitation any adverse tax consequences or loss of favorable tax treatment, public
436 assistance, or other benefits, incurred by any person as a result of participating in the Program.

437

438 (2) No Covered Employer or other employer shall be, or shall be considered to be, a
439 fiduciary in relation to the Program or Trust or any other arrangement under the Program.

440 8. Protection from Liability for the State.

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

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

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

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

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

455

456 (2) The debts, contracts, and obligations of the Program or the Board are not the debts,
457 contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the

458 State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of
459 the Program or the Board.

460 9. Confidentiality of Participant and Account Information.

461 Individual account information relating to accounts under the Program and relating to
462 individual Participants (including but not limited to names, addresses, telephone numbers, email
463 addresses, personal identification information, investments, contributions, and earnings) is
464 confidential and must be maintained as confidential –

465 (1) Except to the extent necessary to administer the Program in a manner consistent
466 with this title, the tax laws of this state, and the Internal Revenue Code; or

467

468 (2) Unless the individual who provides the information or is the subject of the
469 information expressly agrees in writing to the disclosure of the information.

470 10. Intergovernmental Collaboration and Cooperation.

471 The Board may enter into an intergovernmental agreement or memorandum of
472 understanding with the State and any agency of the State to receive outreach, technical
473 assistance, enforcement and compliance services, collection or dissemination of information
474 pertinent to the Program (subject to such obligations of confidentiality as may be agreed or
475 required by law), or other services or assistance. The State and any agencies of the State that
476 enter into such agreements or memoranda of understanding shall collaborate to provide the
477 outreach, assistance, information, and compliance or other services or assistance to the Board.
478 The memoranda of understanding may cover the sharing of costs incurred in gathering and

479 disseminating information and the reimbursement of costs for any enforcement activities or
480 assistance.

481 11. Funding of Program.

482 (1) The Massachusetts Secure Choice Administrative Fund is established in the State
483 Treasury, to be held in trust separate and distinct from the General Fund. Interest earned by the
484 Administrative Fund shall be credited to the Administrative Fund. Moneys in the Administrative
485 Fund are continuously appropriated to the Board.

486

487 (2) The Massachusetts Secure Choice Administrative Fund consists of –

488 (a) Moneys appropriated to the Administrative Fund by the State legislature;

489 (b) Moneys transferred to the Administrative Fund from the Federal government, other
490 State agencies, or local governments;

491 (c) Moneys from the payment of application, account, administrative, or other fees and
492 the payment of other moneys due the Board;

493 (d) Any gifts, donations, or grants made to the State for deposit in the Administrative
494 Fund;

495 (e) Moneys collected for the Administrative Fund from contributions to, or investment
496 returns or assets of, the Program or other moneys collected by or for the Program or pursuant to
497 arrangements established under the Program to the extent permitted under Federal and State law;
498 and

499 (f) Earnings on moneys in the Administrative Fund.

500

501 (3) The Board shall accept any grants, gifts, appropriations, or other moneys from the
502 State, any unit of federal, State, or local government, or any other person, firm, partnership,
503 corporation, or other entity solely for deposit into the Administrative Fund, whether for
504 investment or administrative expenses.

505

506 (4) To enable or facilitate the start-up and continuing operation, maintenance,
507 administration, and management of the Program until the Program accumulates sufficient
508 balances and can generate sufficient funding through fees assessed on Program accounts for the
509 Program to become financially self-sustaining, (i) the Board may borrow from the State, any unit
510 of federal, State, or local government, or any other person, firm, partnership, corporation, or
511 other entity working capital funds and other funds as may be necessary for this purpose, provided
512 that such funds are borrowed in the name of the Program and Board only and that any such
513 borrowings shall be payable solely from the revenues of the Program; and (ii) the Board may
514 enter into long-term procurement contracts with one or more financial providers that provide a
515 fee structure that would assist the Program in avoiding or minimizing the need to borrow or to
516 rely upon general assets of the State.

517

518 (5) Subject to appropriation, the State may pay administrative costs associated with the
519 creation, maintenance, operation, and management of the Program and Trust until sufficient

520 assets are available in the Administrative Fund for that purpose. Thereafter, all administrative
521 costs of the Administrative Fund, including any repayment of start-up funds provided by the
522 State, shall be repaid only out of moneys on deposit therein. However, private funds or Federal
523 funding received in order to implement the Program until the Administrative Fund is self-
524 sustaining shall not be repaid unless those funds were offered contingent upon the promise of
525 such repayment.

526

527 (6) The Board may use the moneys in the Administrative Fund solely to pay the
528 administrative costs and expenses of the Program and the administrative costs and expenses the
529 Board incurs in the performance of its duties under this title.

530

531 Section 12. Audits and Annual Reports.

532 (1) The Board shall cause an accurate account of all of the Program's, Trust's, and
533 Board's activities, operations, receipts, and expenditures to be maintained. Each year, a full audit
534 of the books and accounts of the Board pertaining to those activities, operations, receipts and
535 expenditures, personnel, services, or facilities shall be conducted by a certified public accountant
536 and shall include, but not be limited to, direct and indirect costs attributable to the use of outside
537 consultants, independent contractors, and any other persons who are not State employees for the
538 administration of the Program. For the purposes of the audit, the auditors shall have access to
539 the properties and records of the Program and Board and may prescribe methods of accounting
540 and the rendering of periodic reports in relation to projects undertaken by the Program.

541

542 (2) By August 1 of each year, the Board shall submit to the Governor, the State
543 Treasurer, and the appropriate committees of the Senate and House an audited financial report,
544 prepared in accordance with generally accepted accounting principles, detailing the activities,
545 operations, receipts, and expenditures of the Program and Board during the preceding calendar
546 year. The report shall also include projected activities of the Program for the current calendar
547 year.

548

549 (3) The Board shall prepare an annual report on the operation of the program to be
550 available to all citizens and provided to appropriate state officials.

551 Section 13. Effective Date and Applicability Dates.

552 (1) This Act takes effect on the date on which it is signed into law.

553

554 (2) The Board shall establish the Program so that individuals can begin contributing
555 under the Program not later than January 1st 2022.

556

557 (3) The Board may in its discretion phase in the Program so that the ability to
558 contribute first applies on different dates for different classes of individuals, including employees
559 of employers of different sizes or types and individuals who are not employees (self-employed,

560 independent contractors, etc.). However, any such staged or phased-in implementation schedule
561 must be substantially completed not later than January 1st 2024.

562

563 (4) The Board shall not implement the Program if and to the extent that it determines
564 that the Program is preempted by ERISA. Accordingly, if and as needed, the Board shall
565 implement the Program in a severable fashion to the extent practicable: if and to the extent that
566 the Board determines --

567 (a) that a portion or aspect of the Program is preempted by ERISA, the Board shall not
568 implement that portion or aspect of the Program but shall proceed to implement the remainder of
569 the Program to the extent practicable; or

570 (b) that some but not all of the Payroll Deduction IRA Arrangements or other
571 arrangements under the Program are or would be employee benefit plans under ERISA, the
572 Board shall proceed to implement the Program with respect to the other arrangements under the
573 Program to the extent practicable.

574

575 14. Severability.

576 The provisions of this Section and this title shall be severable and, if any of these
577 provisions is held to be unconstitutional or invalid, the validity of the remaining provisions of
578 this Section and this title will not be affected.