

**HOUSE . . . . . No. 570**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

*Angelo M. Scaccia and William F. Galvin*

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*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:

*Angelo M. Scaccia*

*14th Suffolk*

*William F. Galvin*

*Secretary of the Commonwealth*

**HOUSE . . . . . No. 570**

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By Representative Scaccia of Boston and Galvin, a petition (accompanied by bill, House, No. 570) of Angelo M. Scaccia and William F. Galvin for legislation to establish the Massachusetts secure choice savings program and to encourage retirement planning. Financial Services.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

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. Short title. This Act may be cited as the Massachusetts Secure Choice Savings  
2 Program Act.

3           Section 2. Massachusetts General Laws, Chapter 10, Section 35I is amended by adding  
4 the following new Section:- “ Section 35I ½. The Massachusetts secure Choice Savings Program  
5 Act”.

6           Section 3. Definitions. Unless the context requires a different meaning or as expressly  
7 provided in this Section, all terms shall have the same meaning as when used in a comparable  
8 context in the Internal Revenue Code. As used in this Act:

9           "Board" means the Massachusetts Secure Choice Savings Board established under this  
10 Act.

11           "Department " means the Department of Revenue.

12 "Commissioner" means the Commissioner of Revenue.

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

16 "Employer" means a person or entity engaged in a business, industry, profession, trade,  
17 or other enterprise in the Commonwealth of Massachusetts, whether for profit or not for profit,  
18 that (i) has at no time during the previous calendar year employed fewer than 25 employees in  
19 the State, (ii) has been in business at least 2 years, and (iii) has not offered a qualified retirement  
20 plan, including, but not limited to, a plan qualified under Section 401(a), Section 401(k), Section  
21 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal  
22 Revenue Code of 1986 in the preceding 2 years.

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

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

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

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

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

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

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

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

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

43 Section 4. Establishment of Massachusetts Secure Choice Savings Program. A retirement  
44 savings program in the form of an automatic enrollment payroll deduction IRA, known as the  
45 Massachusetts Secure Choice Savings Program, is hereby established and shall be administered  
46 by the Board for the purpose of promoting greater retirement savings for private-sector  
47 employees in a convenient, low-cost, and portable manner.

48 Section 5. Massachusetts Secure Choice Savings Program Fund.

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

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

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

62 Section 6. Massachusetts Secure Choice Administrative Fund. The Massachusetts Secure  
63 Choice Administrative Fund ("Administrative Fund") is created as a nonappropriated separate  
64 and apart trust fund in the State Treasurer's Office. The Board shall use moneys in the  
65 Administrative Fund to pay for administrative expenses it incurs in the performance of its duties  
66 under this Act. The Board shall use moneys in the Administrative Fund to cover start-up  
67 administrative expenses it incurs in the performance of its duties under this Act. The  
68 Administrative Fund may receive any grants or other moneys designated for administrative  
69 purposes from the State, or any unit of federal or local government, or any other person, firm,  
70 partnership, or corporation. Any interest earnings that are attributable to moneys in the  
71 Administrative Fund must be deposited into the Administrative Fund.

72 Section 7. Composition of the Board. There is created the Massachusetts Secure Choice  
73 Savings Board.

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

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

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

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

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

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

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

97 Section 8. Fiduciary Duty. The Board, the individual members of the Board, the trustee  
98 appointed under subsection (b) of Section 30, any other agents appointed or engaged by the  
99 Board, and all persons serving as Program staff shall discharge their duties with respect to the  
100 Program solely in the interest of the Program's enrollees and beneficiaries as follows:

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

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

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

109 Section 9. Duties of the Board. In addition to the other duties and responsibilities stated  
110 in this Act, the Board shall:

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

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

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

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

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

117 (5) ensures the portability of benefits; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190 Section 10. Risk Management. The Board shall annually prepare and adopt a written  
191 statement of investment policy that includes a risk management and oversight program. This  
192 investment policy shall prohibit the Board, Program, and Fund from borrowing for investment  
193 purposes. The risk management and oversight program shall be designed to ensure that an  
194 effective risk management system is in place to monitor the risk levels of the Program and Fund  
195 portfolio, to ensure that the risks taken are prudent and properly managed, to provide an  
196 integrated process for overall risk management, and to assess investment returns as well as risk  
197 to determine if the risks taken are adequately compensated compared to applicable performance  
198 benchmarks and standards. The Board shall consider the statement of investment policy and any  
199 changes in the investment policy at a public hearing.

200 Section 11. Investment firms.

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

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

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

215 Section 12. Investment options.

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

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

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

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

240 Section 13. Benefits. Interest, investment earnings, and investment losses shall be  
241 allocated to individual Program accounts as established by the Board under subsection (d) of  
242 Section 30 of this Act. An individual's retirement savings benefit under the Program shall be an  
243 amount equal to the balance in the individual's Program account on the date the retirement

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

246 Section 14. Employer and employee information packets and disclosure forms.

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

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

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

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

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

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

259 (4) how to participate in the Program with a level of employee contributions other than  
260 3%;

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

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

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

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

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

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

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

276 Section 15. Program implementation and enrollment. Except as otherwise provided in  
277 Section 93 of this Act, the Program shall be implemented, and enrollment of employees shall  
278 begin, within 24 months after the effective date of this Act. The provisions of this Section shall  
279 be in force after the Board opens the Program for enrollment.

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

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

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

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

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

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

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

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

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

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

329           Section 16. Payments. Employee contributions deducted by the participating employer  
330 through payroll deduction shall be paid by the participating employer to the Fund using one or  
331 more payroll deposit retirement savings arrangements established by the Board under subsection  
332 (h) of Section 30 of this Act, either:

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

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

339           Section 17. Duty and liability of the Commonwealth.

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

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

348 Section 18. Duty and liability of participating employers.

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

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

357 Section 19. Audit and reports.

358 (a) The Board shall annually submit:

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

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

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

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

377 Section 20. Penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

494 Section 21. Rules. The Department shall adopt rules and regulations, in accordance with  
495 the Massachusetts Administrative Procedure Act (Mass. Gen. Laws Ch. 30A), any rules that may  
496 be necessary to implement this Act.

497           Section 22. Delayed implementation. If the Board does not obtain adequate funds to  
498 implement the Program within the time frame set forth under Section 60 of this Act, the Board  
499 may delay the implementation of the Program.

500           Section 23. Federal considerations. The Board shall request in writing an opinion or  
501 ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income  
502 Security Act regarding the applicability of the federal Employee Retirement Income Security Act  
503 to the Program. The Board may not implement the Program if the IRA arrangements offered  
504 under the Program fail to qualify for the favorable federal income tax treatment ordinarily  
505 accorded to IRAs under the Internal Revenue Code or if it is determined that the Program is an  
506 employee benefit plan and State or employer liability is established under the federal Employee  
507 Retirement Income Security Act.

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