

SENATE No. 653

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to secure choice retirement savings plan.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/1/2021</i>

SENATE No. 653

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 653) of Sal N. DiDomenico and Maria Duaine Robinson for legislation relative to secure choice retirement savings plan. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 574 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to secure choice retirement savings plan.

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

1 Chapter 29 of the Massachusetts General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by inserting at the end the following new sections:

3 Section 64F. Definitions

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

5 a. “Board” means the Secure Choice Retirement Savings Board.

6 b. “Eligible employee” means a person who is employed by an eligible employer and
7 who for any calendar year has provided (or is expected to provide) 750 or more hours of service
8 to the eligible employer, with eligibility continuing even if service in later years is less than 750
9 hours.

- 10 c. “Eligible employee” does not include:
- 11 i. Any employee who is an “active participant” as described in IRC Section Sec.
12 219(g)(5), without regard to the exclusions for plans described in IRC Section 457(b).
- 13 ii. Any employee who is enrolled in a payroll deduction IRA maintained or offered by the
14 employee’s employer.
- 15 iii. Any employee who is covered by a collective bargaining agreement that does not
16 provide for participation in the IRAP.
- 17 iv. Any employee who has not attained the age of 18 before the beginning of the calendar
18 year.
- 19 d. “Eligible employer” means a person or entity engaged in a specific business, industry,
20 profession, trade, or other enterprise in the Commonwealth, whether for profit or not for profit
21 excluding the federal government, the Commonwealth, any county, any municipality, or any of
22 the Commonwealth’s units or instrumentalities, with the exception that the Commonwealth is
23 deemed an eligible employer with regard to Personal Care Attendants, Family Child Care
24 Providers, and other direct or indirect employees of the Commonwealth, including a joint
25 employment relationship, who are not eligible to participate in a public employee pension fund
26 within the Commonwealth.
- 27 e. “Eligible employer” does not include any employer that has not been in business at all
28 times during the preceding calendar year.
- 29 f. “Participating employer” means an eligible employer that provides a payroll deposit
30 retirement savings arrangement provided for by this title for eligible employees.

31 g. “Payroll deduction IRA” means an arrangement by which an employer makes
32 contributions on behalf of participating employees by remitting a specified portion of the
33 employee’s pay to an IRA at the same time and manner as other payroll deductions.

34 h. “IRAP” means the Secure Choice Individual Retirement Account Program.

35 g. “MERP” means the Secure Choice Multiple-Employer Retirement Plan.

36 j. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended,
37 29 U.S.C. §§ 1001 et seq.

38 k. “Code” or “IRC” means the Internal Revenue Code of 1986, as amended, 26 U.S.C. §§
39 1 et seq.

40 l. “PRIM Board” means the Massachusetts Pension Reserves Investment Management
41 Board.

42 j. “Qualified Plan” means any plan described in IRC Sections 401(a), 403(a), 403(b), or
43 457(b).

44 k. “IRA” means any account or annuity described in IRC Section 408(a) or (b).

45 Section 64G. Responsibilities of Eligible Employers

46 a. Each eligible employer is required to automatically enroll its eligible employees in the
47 IRAP.

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

51 Section 64H IRAP

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

53 b. The IRAP shall:

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

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

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

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

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

62 (vi) Be professionally managed.

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

67 (viii) Maintain a separate trust.

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

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

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

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

76 Section 64H MERP

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

78 b. The MERP shall:

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

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

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

82 (iv) Be governed by ERISA.

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

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

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

- 89 (viii) Have a default, automatic contribution rate for both employees and employers.
- 90 (ix) Offer default escalation of contribution levels that can be increased or decreased
91 within the limits allowed by the IRC.
- 92 (x) Pool accounts established under the plan for investment.
- 93 (xi) Be professionally managed.
- 94 (xii) Allow the use of private sector partnerships to administer and invest the
95 contributions to the plan under the supervision and guidance of the Board. Moneys in the IRAP
96 may be invested or reinvested by the Treasurer or may be invested in whole or in part under
97 contract with the PRIM Board or private money managers, or both, as determined by the Board.
- 98 (xiii) Maintain a separate trust.
- 99 (xiv) Provide for the Plan's administration in an efficient and cost-effective manner.
- 100 (xv) Designate the Board as the named fiduciary, within the meaning of ERISA Section
101 402(a), and provide that the Board may delegate fiduciary authority as permitted under ERISA.
- 102 (xvi) Designate the Board as the plan sponsor and administrator, as defined under
103 ERISA Section (3)(16).
- 104 (xvi) Provide the Board with the authority to establish such rules and regulations as it
105 considers appropriate for the administration of the MERP, including with regard to the selection
106 of investment options, the manner of safeguarding contributions and other plan assets, the
107 payment of administrative expenses, and the purchase of insurance.

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

110 Section 64I Composition of the Board

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

114 i. The Treasurer, or his or her designee.

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

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

118 iv. A small business representative appointed by the Governor.

119 v. Two public members appointed by the Treasurer.

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

121 b. Within one year of the date the Board opens the IRAP and MERP for participation, the
122 Treasurer will remain as Board member and will conduct elections to elect Representative Board
123 members to represent the interests of participating employers and employees. The Treasurer will
124 conduct an election among participating employees to elect four of their number to be
125 Representative Board members to represent the interests of participating employees with regard
126 to both the IRAP and the MERP. The Treasurer will also conduct an election among
127 participating employers in the MERP to elect four of their number to be Representative Board

128 members from among themselves to represent the interests of participating employers solely with
129 respect to the MERP. These additional Board members shall be designated as Representative
130 Board members, and must continue to participate in the Plan in order to serve on the Board. If
131 any such Representative Board member ceases to participate in the Plan, his or her eligibility to
132 continue as a Representative Board member shall cease as well, and the Board shall make
133 arrangements to hold an election to elect a replacement. The terms of Representative Board
134 members shall be for three years.

135 Section 64J Risk Management

136 The Board shall annually prepare and adopt a written statement of investment policy that
137 includes a risk management and oversight program. The investment policy or policies shall
138 mitigate risk by maintaining a balanced investment portfolio that provides assurance that no
139 single investment or class of investments will have a disproportionate impact on the total
140 portfolio. The policy or policies shall also address hedging against longevity risk through the
141 purchase of annuities or other longevity hedging products. The risk management and oversight
142 program shall be designed to ensure that an effective risk management system is in place to
143 monitor the risk levels of the Secure Choice Retirement Savings Plan investment portfolios and
144 ensure that the risks taken are prudent and properly managed. The Board shall be allowed to
145 decide investment policy for each program while making different investment decisions with
146 each program within these guidelines. The Board shall decide whether to offer a choice of
147 investment vehicles to participants.

148 Section 64K Benefit Amount

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

154 Section 64L Board Duties

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

157 a. Establish one or more payroll deposit retirement savings arrangements for use by
158 participating employers.

159 b. Employ staff and/or appoint recordkeeper, investment managers, custodians, trustees,
160 consultants, attorneys and such other advice and assistance as may necessary or desirable to
161 administer the Plan, and determine the duties of the Plan administrator and other staff as necessary
162 and set their compensation. The Board shall have the authority to make rules and regulations not
163 inconsistent with this Act.

164 c. Make provisions for the payment of costs of administration and operation of the trusts.

165 d. Evaluate and establish the process by which an eligible employee may contribute a
166 portion of his or her salary or wages to the Plan for automatic deposit of those contributions. This
167 may include, but is not limited to, existing processes and arrangements used for the deposit and
168 administration of tax required to be deducted and withheld relating to the collection of income
169 tax at source on wages or for the deposit of tax required to be paid under the unemployment

170 insurance system. This also may include, but is not limited to, financial services companies and
171 third-party administrators with the capability to receive and process employee information and
172 contributions for payroll deposit retirement savings arrangements or other arrangements
173 authorized by this title.

174 e. Evaluate and establish the process by which a participating employer is able to make
175 contributions for the benefit of its employees to the MERP.

176 f. Design and establish the process for the enrollment of Plan participants.

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

180 h. The Commonwealth shall procure insurance indemnifying each member of the Board
181 from personal loss or liability resulting from a member's action or inaction as a member of the
182 Board, to the extent permitted by ERISA and other governing law.

183 i. Set default, minimum and maximum contribution levels as well as auto-escalation
184 policies whereby participating employees' contributions automatically escalate from year to year
185 until they reach a maximum contribution rate unless the employee changes his or her
186 contribution rate. Participants will be immediately vested in their account balances.

187 j. Accept contributions from participating employers for the benefit of their employees.
188 These contributions shall be in cash or cash equivalents only; securities shall not be accepted as
189 contributions.

190 k. Design and establish the process for the enrollment of those self-employed individuals
191 and employers who do not qualify as eligible employers who choose to voluntarily participate in
192 the MERP.

193 l. Arrange for collective, common, and pooled investment of assets of the Plan, including
194 investments in conjunction with other funds with which those assets are permitted to be
195 collectively invested, with a view to saving costs through efficiencies and economies of scale.

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

200 n. Explore and establish investment options that offer employees ways to secure
201 retirement income without incurring debt or liabilities to the state.

202 o. Exercise discretionary authority with regard to:

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

205 ii. Making factual determinations regarding the Plan;

206 iii. Interpreting the Plan's governing documents; and

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

208 p. The Board shall publish separate annual audited financial reports, prepared in
209 accordance with generally accepted accounting principles, on the operations of the IRAP and the

210 MERP. The annual audit shall be made by an independent certified public accountant and shall
211 include, but not be limited to, direct and indirect costs attributable to the use of outside
212 consultants, independent contractors, and any other persons who are not state employees.

213 r. The Board shall ensure that all reports required under the Code and ERISA are properly
214 filed for the IRAP and MERP.

215 Section 64M Employee Information Packet

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

219 Section 64N Disclosure Form

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

221 a. The benefits and risks associated with participating in the relevant program.

222 b. The mechanics of how to join the respective program.

223 c. How to opt out of the program.

224 d. The process for applying for payment of retirement benefits.

225 e. How to obtain additional information.

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

227 a. That employers are not liable for decisions employees make pursuant to this bill.

228 b. The Plan fund is not guaranteed by the Commonwealth.

229 Section 64N Enforcement

230 The Massachusetts Attorney General shall have the power to enforce the provisions of
231 this Act.

232 a. The Attorney General may impose, after due process, penalties against eligible
233 employers for failure to comply with Section 64G of Section 12 of up to \$250 per eligible
234 employee. Proceeds of such penalties, after deducting enforcement expenses, shall be deposited
235 for the benefit of the IRAP.

236 b. The Attorney General shall impose, after due process, penalties against employers
237 equal to lost earnings and interest on contributions made later than the deadlines prescribed by
238 the Board. The Attorney General shall prescribe a methodology for calculating such lost earnings
239 and interest. Proceeds of such penalties shall be deposited for the benefit of the Trust and
240 credited to the accounts of the affected employee(s) on a pro rata basis.

241 Section 64O Liability

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

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

249 Section 64P Savings Clause

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

253 Section 64Q Taxes

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

256 Section 20 Effective date

257 a. The effective date of this act shall be January 1, 2020.

258 b. Notwithstanding the forgoing, Section 64G shall be effective as follows:

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

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

263 (iii) For each eligible employer with fewer than 50 eligible employees, three months after
264 the Board opens the Plan for enrollment.

265 (iv) The Board may delay these effective dates in its discretion.