

HOUSE No. 939

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

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:

Angelo M. Scaccia

William F. Galvin

DISTRICT/ADDRESS:

14th Suffolk

Secretary of the Commonwealth

HOUSE No. 939

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 939) of Angelo M. Scaccia and William F. Galvin relative to establishing a secure choice savings plan. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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
50 a trust outside of the State Treasurer's Office, with the Board as its trustee. The Fund shall
51 include the individual retirement accounts of enrollees, which shall be accounted for as
52 individual accounts. Moneys in the Fund shall consist of moneys received from enrollees and

53 participating employers pursuant to automatic payroll deductions and contributions to savings
54 made under this Act. The Fund shall be operated in a manner determined by the Board, provided
55 that the Fund is operated so that the accounts of enrollees established under the Program meet the
56 requirements 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
84 for necessary travel expenses incurred in connection with their Board duties from funds
85 appropriated for the purpose.

86 (c) The initial appointments shall be as follows: one public representative for 4 years;
87 one public representative for 2 years; the representative of participating employers for 3 years;
88 and 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
91 balance of 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
93 will diligently and honestly administer the affairs of the Board and that he or she will not
94 knowingly violate or willingly permit to be violated any of the provisions of law applicable to

95 the Program. The oath shall be certified by the officer before whom it is taken and immediately
96 filed in the 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
115 employers 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
123 offer employees returns on contributions and the conversion of individual retirement savings
124 account 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
126 losses are allocated to individual program accounts on a pro rata basis and are computed at the
127 interest 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
136 Program 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
140 described in Section 45 of this Act, with a view to achieving cost savings through efficiencies
141 and economies of scale.

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

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

154 (l) Accept any grants, appropriations, or other moneys from the Commonwealth, any
155 unit 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
175 pro rata basis.

176 (p) Set minimum and maximum contribution levels in accordance with limits
177 established 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
180 Program 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
183 low-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,
187 gifts, donations, fees, and earnings from investments from the Massachusetts Secure Choice
188 Savings Program Fund that are used to recover administrative costs. All expenses of the Board
189 shall be 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
209 federal 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
213 deems necessary for the Board to oversee each investment manager's performance and the
214 performance 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
217 date based upon the age of the enrollee. This shall be the default investment option for enrollees
218 who fail to elect an investment option unless and until the Board designates by rule a new
219 investment 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
234 determine whether such option shall replace the target date or life-cycle fund as the default
235 investment option for enrollees who do not elect an investment option. In making such
236 determination, the Board shall consider the cost, risk profile, benefit level, and ease of
237 enrollment in the secure return fund. The Board may at any time thereafter revisit this question
238 and, based upon an analysis of these criteria, establish either the secure return fund or the life-
239 cycle fund as the 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
253 and the employer information packet.

254 (c) The employee information packet shall include a disclosure form. The disclosure
255 form 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
260 than 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
269 note his or her decision to opt out of participation in the Program or elect to participate with a
270 level of employee contributions other than 3%.

271 (e) Participating employers shall supply the employee information packet to
272 employees upon launch of the Program. Participating employers shall supply the employee
273 information packet to new employees at the time of hiring, and new employees may opt out of
274 participation in the Program or elect to participate with a level of employee contributions other
275 than 3% at that 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
284 has 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
290 level may be expressed as a percentage of wages or as a dollar amount up to the deductible
291 amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code.
292 Enrollees may change their contribution level at any time, subject to rules promulgated by the
293 Board. If an enrollee fails to select a contribution level using the form described in subsection (c)
294 of Section 55 of this Act, then he or she shall contribute 3% of his or her wages to the Program,
295 provided that such contributions shall not cause the enrollee's total contributions to IRAs for the
296 year to exceed the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A)
297 of the 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
306 once 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
317 a 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
334 compensation 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
336 not 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
341 any retirement savings benefits accrued by any individual under the Program. Any financial
342 liability for the payment of retirement savings benefits in excess of funds available under the
343 Program shall be borne solely by the entities with whom the Board contracts to provide
344 insurance to protect the value of the Program.

345 (b) No State board, commission, or agency, or any officer, employee, or member
346 thereof is liable for any loss or deficiency resulting from particular investments selected under

347 this Act, except for any liability that arises out of a breach of fiduciary duty under Section 25 of
348 this Act.

349 Section 18. Duty and liability of participating employers.

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

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

358 Section 19. Audit and reports.

359 (a) The Board shall annually submit:

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

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

368 accountant and shall include, but is not limited to, direct and indirect costs attributable to the use
369 of outside consultants, independent contractors, and any other persons who are not State
370 employees for the administration of the Program.

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

378 Section 20. Penalties.

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

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

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

388 (b) After determining that an employer is subject to penalty under this Section for a
389 calendar year, the Department shall issue a notice of proposed assessment to such employer,
390 stating the number of employees for which the penalty is proposed under item (1) of subsection
391 (a) of this Section and the number of employees for which the penalty is proposed under item (2)
392 of subsection (a) of this Section for such calendar year, and the total amount of penalties
393 proposed.

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

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

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

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

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

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

424 (e) An employer who has overpaid a penalty assessed under this Section may file a
425 claim for refund with the Department. A claim shall be in writing in such form as the Department
426 may by rule prescribe and shall state the specific grounds upon which it is founded. As soon as
427 practicable after a claim for refund is filed, the Department shall examine it and either issue a
428 refund or issue a notice of denial. If such a protest is filed, the Department shall reconsider the
429 denial and grant the employer a hearing. As soon as practicable after such reconsideration and

430 hearing, the Department shall issue a notice of decision to the employer. The notice shall set
431 forth briefly the Department's findings of fact and the basis of decision in each case decided in
432 whole or in part adversely to the employer. A denial of a claim for refund becomes final 90 days
433 after the date of issuance of the notice of the denial except for such amounts denied as to which
434 the employer has filed a protest with the Department. If a protest has been timely filed, the
435 decision of the Department shall become final:

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

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

443 (f) No notice of proposed assessment may be issued with respect to a calendar year
444 after June 30 of the fourth subsequent calendar year. No claim for refund may be filed more than
445 1 year after the date of payment of the amount to be refunded.

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

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

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

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

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

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

474 disclosed. Nothing contained in this subsection shall prevent the Commissioner from divulging
475 information to an authorized representative of the employer or to any person pursuant to a
476 request or authorization made by the employer or by an authorized representative of the
477 employer.

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

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

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

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

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

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

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