

HOUSE No. 924

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

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>James J. O'Day</i>	<i>14th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>

<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>

HOUSE No. 924

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 924) of James J. O'Day and others for legislation to establish secure choice retirement savings plan. Financial Services.

The Commonwealth of Massachusetts

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

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 is hereby amended by inserting at the end
2 the following new section:

3 Section 64F.

4 Section 1. Definitions

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

6 a. "Board" means the Secure Choice Retirement Savings Board.

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

- 11 c. “Eligible employee” does not include:
- 12 i. Any employee who is an “active participant” as described in Sec. 219(g)(5) of
13 Title 26 of the United States Code or in an automatic enrollment payroll deduction IRA
14 maintained or offered by the employee’s employer.
- 15 ii. Any employee covered by a collective bargaining agreement that expressly
16 provides for the employer to contribute to a multiemployer pension plan described in Sec. 414(f)
17 of Title 26 of the United States Code.
- 18 iii. Any employee who has not attained the age of 18 before the beginning of the
19 calendar year.
- 20 d. “Eligible employer” means a person or entity engaged in a specific business,
21 industry, profession, trade, or other enterprise in the Commonwealth, whether for profit or not
22 for profit, that has ten or more employees, excluding the federal government, the
23 Commonwealth, any county, any municipality, or any of the Commonwealth’s units or
24 instrumentalities, with the exception that the Commonwealth is deemed an eligible employer
25 with regard to Personal Care Attendants, Family Child Care Providers, and other direct or
26 indirect employees of the Commonwealth who are not eligible to participate in a public
27 employee pension fund within the Commonwealth.
- 28 e. “Eligible employer” does not include any employer that has not been in business
29 at all times during the calendar year and the preceding calendar year.
- 30 f. “Participating employee” means an eligible employee who makes contributions
31 into the Secure Choice Retirement Savings Plan.

32 g. “Participating employer” means an eligible employer that provides a payroll
33 deposit retirement savings arrangement provided for by this title for eligible employees.

34 h. “Payroll deposit retirement savings arrangement” means an arrangement by which
35 an employer makes contributions on behalf of participating employees by remitting a specified
36 portion of the employee’s pay to the Secure Choice Retirement Savings Plan at the same time
37 and manner as payroll deductions.

38 i. “Plan” means the Secure Choice Retirement Savings Plan, which includes both
39 the Secure Choice Multiple-Employer Retirement Plan (“MERP”) and the Secure Choice
40 Individual Retirement Account Plan (“IRAP”).

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

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

45 l. “PRIM Board” means the Massachusetts Pension Reserves Investment
46 Management Board.

47 Section 2. Responsibilities of Eligible Employers

48 An eligible employer satisfies its obligations to its eligible employees under this Act by
49 doing any one of the following:

50 a. Establishing an employer-sponsored retirement plan, such as a single-employer
51 defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive
52 Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction

53 IRA, or becoming a contributing employer to a multiemployer pension plan described in Sec.
54 414(f) of Title 26 of the United States Code;

55 b. Becoming a participating employer in the Secure Choice Multiple-Employer
56 Retirement Plan (“MERP”) described in Section 3(a) below; or

57 c. Automatically enrolling eligible employees in the Secure Choice Individual
58 Retirement Account Plan (“IRAP”), as described in Section 3(b) below.

59 Section 3 Trusts

60 There are hereby established two retirement savings trust funds known collectively as the
61 Secure Choice Retirement Savings Trusts (“trusts”) to be administered by the Board for the
62 purpose of promoting greater retirement savings for Commonwealth employers and employees
63 in a convenient, voluntary, low-cost, and portable manner. The two trust funds are established as
64 follows:

65 a. The Secure Choice Multiple-Employer Retirement Trust will be established as a
66 profit sharing defined contribution (individual account) plan within the meaning of Sections
67 401(a)(27) and 414(i) of the Code and will be qualified under Section 401(a) of the Code.

68 b. The Secure Choice Individual Retirement Account Trust will be established to
69 accept individual contributions through payroll deduction and direct payment into individual
70 retirement accounts established under Sections 408(a) and/or 408(b) of the Code.

71 Section 4 Composition of the Board

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

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

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

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

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

80 v. Two public members appointed by the Treasurer.

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

82 b. Within one year of the date the Board opens the Secure Choice Retirement
83 Savings Plan for participation, the Treasurer will remain as Board member and will conduct
84 elections to elect Representative Board members to represent the interests of participating
85 employers and employees. The Treasurer will conduct an election among participating
86 employees to elect four of their number to be Representative Board members to represent the
87 interests of participating employees. The Treasurer will also conduct an election among
88 participating employers in the Secure Choice Multiple-Employer Retirement Plan (“MERP”) to
89 elect four of their number to be Representative Board members from among themselves to
90 represent the interests of participating employers. These additional Board members shall be
91 designated as Representative Board members, and must continue to participate in the Plan in
92 order to serve on the Board. If any such Representative Board member ceases to participate in

93 the Plan, his or her eligibility to continue as a Representative Board member shall cease as well,
94 and the Board shall make arrangements to hold an election to elect a replacement. The terms of
95 Representative Board members shall be for three years.

96 Section 5 Fiduciary Duty

97 The Board and the Plan administrator and staff shall act as fiduciaries under ERISA with
98 regard to the Secure Choice Multiple-Employer Retirement Trust, and discharge their duties with
99 respect to both trusts solely in the interest of the Plan participants as follows:

100 a. For the exclusive purposes of providing benefits to Plan participants and
101 defraying reasonable expenses of administering the Plan.

102 b. By investing with the care, skill, prudence, and diligence under the circumstances
103 then prevailing that a prudent person acting in a like capacity and familiar with those matters
104 would use in the conduct of an enterprise of a like character and with like aims.

105 c. Any contributions paid by employees and employers into the Secure Choice
106 Multiple-Employer Retirement Trust shall be used exclusively for the purpose of paying benefits
107 to the participants of the Secure Choice Multiple-Employer Retirement Plan, for the cost of
108 administering the MERP, and for investments made for the benefit of the MERP.

109 d. Any contributions paid by employees into the Secure Choice Individual
110 Retirement Account Trust shall be used exclusively for the purpose of paying benefits to the
111 participants of the Secure Choice Individual Retirement Account Plan, for the cost of
112 administering the IRAP, and for investments made for the benefit of the IRAP.

113 Section 6 Risk Management

114 The Board shall annually prepare and adopt a written statement of investment policy that
115 includes a risk management and oversight program. The investment policy or policies shall
116 mitigate risk by maintaining a balanced investment portfolio that provides assurance that no
117 single investment or class of investments will have a disproportionate impact on the total
118 portfolio. The policy or policies shall also address hedging against longevity risk through the
119 purchase of annuities or other longevity hedging products. The risk management and oversight
120 program shall be designed to ensure that an effective risk management system is in place to
121 monitor the risk levels of the Secure Choice Retirement Savings Plan investment portfolios and
122 ensure that the risks taken are prudent and properly managed.

123 Section 7 Investments

124 Moneys in the trusts may be invested or reinvested by the Treasurer or may be invested in
125 whole or in part under contract with the PRIM board or private money managers, or both, as
126 determined by the Board.

127 Section 8 Benefit Amount

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

133 Section 9 Benefit Form

134 Benefits under the Secure Choice MERP will be paid by converting a participating
135 employee's account balance to a lifetime annuity. Participating employees with accounts in both
136 the MERP and the IRAP have the option of adding all or any part of their IRAP account balance
137 to their MERP account balance prior to converting their MERP balance to a lifetime annuity.
138 For married participants, the automatic form of MERP benefit payment will be a joint and
139 survivor annuity. A MERP participant will have, upon retirement, the option to receive up to
140 \$20,000 of his or her account balance (but no more than 50 percent of the account balance, in
141 any event) in the form of a lump sum payment. A married participant's election of this optional
142 form is subject to the spousal waiver requirements of ERISA section 205. This \$20,000 balance
143 may be increased by the Board.

144 Section 10 Board Duties

145 The Board shall have the power and authority to do all of the following:

- 146 a. Establish one or more payroll deposit retirement savings arrangements for use by
147 participating employers.
- 148 b. Employ staff and/or appoint a Plan administrator, and determine the duties of the
149 Plan administrator and other staff as necessary and set their compensation.
- 150 c. Make provisions for the payment of costs of administration and operation of the
151 trusts.
- 152 d. Evaluate and establish the process by which an eligible employee may contribute
153 a portion of his or her salary or wages to the Plan for automatic deposit of those contributions.
154 This may include, but is not limited to, existing processes and arrangements used for the deposit

155 and administration of tax required to be deducted and withheld relating to the collection of
156 income tax at source on wages or for the deposit of tax required to be paid under the
157 unemployment insurance system. This also may include, but is not limited to, financial services
158 companies and third-party administrators with the capability to receive and process employee
159 information and contributions for payroll deposit retirement savings arrangements or other
160 arrangements authorized by this title.

161 e. Evaluate and establish the process by which a participating employer is able to
162 make contributions for the benefit of its employees to the Secure Choice Multiple-Employer
163 Retirement Trust.

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

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

168 h. Procure insurance indemnifying each member of the Board from personal loss or
169 liability resulting from a member's action or inaction as a member of the Board, to the extent
170 permitted by ERISA and other governing law.

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

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

178 k. Design and establish the process for the enrollment of those self-employed
179 individuals and employers who do not qualify as eligible employers who choose to voluntarily
180 participate in the Plan.

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

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

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

190 o. Exercise discretionary authority with regard to:

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

193 ii. Making factual determinations regarding the Plan;

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

- 195 iv. Such other matters as are necessary for the administration of the Plan.
- 196 p. The Board shall take all such actions required or advisable to ensure that the
197 MERP is treated as a single plan for purposes of ERISA.
- 198 q. The Board shall publish an annual audited financial report, prepared in
199 accordance with generally accepted accounting principles, on the operations of the Secure
200 Choice Retirement Savings Plan. The annual audit shall be made by an independent certified
201 public accountant and shall include, but not be limited to, direct and indirect costs attributable to
202 the use of outside consultants, independent contractors, and any other persons who are not state
203 employees.
- 204 r. The Board shall ensure that all reports required under the Code and ERISA are
205 properly filed for the Plan.

206 Section 11 Employee Information Packet

207 Prior to opening the Secure Choice Retirement Savings Plan for enrollment, the Board
208 shall design and disseminate to employers an employee information packet. The packet shall
209 include background information on the Plan and appropriate disclosures for employees.

210 Section 12 Disclosure Form

211 The disclosure form shall include, but not be limited to, all of the following:

- 212 a. The benefits and risks associated with participating in the Plan.
- 213 b. The mechanics of how to join the Plan.
- 214 c. How to opt out of the Plan.

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

216 e. How to obtain additional information on the Plan.

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

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

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

220 Section 13 Enrollment

221 After the Board opens the Secure Choice Retirement Savings Plan for enrollment:

222 a. Any employer may choose to have a payroll deposit retirement savings
223 arrangement to allow any eligible employee to participate in the Plan.

224 b. Beginning three months after the Board opens the Plan for enrollment, each
225 eligible employer with more than 100 eligible employees shall have a payroll deposit retirement
226 savings arrangement to allow each eligible employee to participate in the program.

227 c. Beginning six months after the Board opens the Plan for enrollment, each eligible
228 employer with more than 50 eligible employees shall have a payroll deposit retirement savings
229 arrangement to allow each eligible employee to participate in the Plan.

230 d. Beginning nine months after the Board opens the Plan for enrollment, all eligible
231 employers shall have a payroll deposit retirement savings arrangement to allow each eligible
232 employee to participate in the Plan.

233 e. Employers must announce the availability of the Plan to each eligible employee 2
234 weeks in advance of establishing employee eligibility, or, for employees hired after the employer
235 establishes eligibility, prior to their date of hire. Each eligible employee shall be enrolled in the
236 Plan unless the employee elects not to participate in the Plan.

237 f. Employers shall retain the option at all times to set up any type of employer-
238 sponsored retirement plan, such as a single-employer defined benefit plan or a 401(k), Simplified
239 Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan,
240 or to offer an automatic enrollment payroll deduction IRA, in lieu of having a payroll deposit
241 retirement savings arrangement to allow employee participation in the Secure Choice Retirement
242 Savings Plan.

243 g. Unless otherwise specified by the employer or directed by the employee, a
244 participating employer shall contribute 3 percent of the employee's annual salary or wages to the
245 Plan.

246 h. By regulation, the Board may adjust the contribution amount set in subdivision
247 (h) to no less than 2 percent and no more than 5 percent and may vary that amount within that
248 according to the length of time the employee has contributed to the program.

249 Section 14 Payments

250 Employer contributions made through payroll deduction shall be paid by the employer to
251 the Secure Choice Retirement Savings Trusts in the manner and according to the schedule
252 specified and established by the Board.

253 Section 15 Enforcement

254 The Massachusetts Attorney General shall have the power to enforce the provisions of
255 this Act.

256 a. The Attorney General may impose, after due process, penalties against eligible
257 employers for failure to comply with provisions (b), (c) and (d) of Section 12 of up to \$250 per
258 employee. Proceeds of such penalties, after deducting enforcement expenses, shall be deposited
259 for the benefit of the Trust.

260 b. The Attorney General shall impose, after due process, penalties against employers
261 equal to lost earnings and interest on contributions made later than the deadlines prescribed in
262 Section 13. The Attorney General shall prescribe a methodology for calculating such lost
263 earnings and interest. Proceeds of such penalties shall be deposited for the benefit of the Trust
264 and credited to the accounts of the affected employee(s) on a pro rata basis.

265 Section 16 Liability

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

268 Section 17 Fiduciary

269 Participating employers shall not be a fiduciary, or considered to be a fiduciary, over the
270 Secure Choice Retirement Savings Trust or the Plan, except with respect to contribution amounts
271 not remitted in a timely fashion. Participating employers shall not bear responsibility for the
272 administration, investment, or investment performance of the Plan. Such employers shall not be
273 liable with regard to investment returns, Plan design, and benefits paid to Plan participants.

274 Section 18 Savings Clause

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

278 The effective date of this act shall be January 1, 2017.