

6045

2015-2016 Regular Sessions

I N S E N A T E

September 11, 2015

Introduced by Sen. SAVINO -- read twice and ordered printed, and when
printed to be committed to the Committee on Rules

AN ACT to amend the retirement and social security law and the state
finance law, in relation to enacting the New York state secure choice
savings program act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state secure choice savings program act".

3 S 2. The retirement and social security law is amended by adding a new
4 article 14-C to read as follows:

5 ARTICLE 14-C

6 NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM

7 SECTION 570. DEFINITIONS.

8 571. PROGRAM ESTABLISHED.

9 572. COMPOSITION OF THE BOARD.

10 573. FIDUCIARY DUTY.

11 574. DUTIES OF THE BOARD.

12 575. RISK MANAGEMENT.

13 576. INVESTMENT FIRMS.

14 577. INVESTMENT OPTIONS.

15 578. BENEFITS.

16 579. EMPLOYER AND EMPLOYEE INFORMATION PACKETS AND DISCLOSURE
17 FORMS.

18 580. PROGRAM IMPLEMENTATION AND ENROLLMENT.

19 581. PAYMENTS.

20 582. DUTY AND LIABILITY OF THE STATE.

21 583. DUTY AND LIABILITY OF PARTICIPATING EMPLOYERS.

22 584. AUDIT AND REPORTS.

23 585. PENALTIES.

24 586. DELAYED IMPLEMENTATION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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587. FEDERAL CONSIDERATIONS.

S 570. DEFINITIONS. ALL TERMS SHALL HAVE THE SAME MEANING AS WHEN USED IN A COMPARABLE CONTEXT IN THE INTERNAL REVENUE CODE. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "BOARD" SHALL MEAN THE NEW YORK SECURE CHOICE SAVINGS BOARD ESTABLISHED UNDER THIS ARTICLE.

2. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF THE DEPARTMENT OF TAXATION AND FINANCE.

2-A. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF TAXATION AND FINANCE.

3. "EMPLOYEE" SHALL MEAN ANY INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER, WHO IS EMPLOYED BY AN EMPLOYER, AND WHO HAS WAGES THAT ARE ALLOCABLE TO NEW YORK STATE DURING A CALENDAR YEAR.

4. "EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) HAS AT NO TIME DURING THE PREVIOUS CALENDAR YEAR EMPLOYED FEWER THAN TWENTY-FIVE EMPLOYEES IN THE STATE, (II) HAS BEEN IN BUSINESS AT LEAST TWO YEARS, AND (III) HAS NOT OFFERED A QUALIFIED RETIREMENT PLAN, INCLUDING, BUT NOT LIMITED TO, A PLAN QUALIFIED UNDER SECTIONS 401(A), 401(K), 403(A), 403(B), 408(K), 408(P) OR 457(B) OF THE INTERNAL REVENUE CODE OF 1986 IN THE PRECEDING TWO YEARS.

5. "ENROLLEE" SHALL MEAN ANY EMPLOYER WHO IS ENROLLED IN THE PROGRAM.

6. "FUND" SHALL MEAN THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND.

7. "INTERNAL REVENUE CODE" SHALL MEAN THE INTERNAL REVENUE CODE OF 1986, OR ANY SUCCESSOR LAW, IN EFFECT FOR THE CALENDAR YEAR.

8. "IRA" SHALL MEAN A ROTH IRA (INDIVIDUAL RETIREMENT ACCOUNT).

9. "PARTICIPATING EMPLOYER" SHALL MEAN AN EMPLOYER OR SMALL EMPLOYER THAT PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS PROVIDED FOR BY THIS ARTICLE FOR ITS EMPLOYEES WHO ARE ENROLLEES IN THE PROGRAM.

10. "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT" SHALL MEAN AN ARRANGEMENT BY WHICH A PARTICIPATING EMPLOYER ALLOWS ENROLLEES TO REMIT PAYROLL DEDUCTION CONTRIBUTIONS TO THE PROGRAM.

11. "PROGRAM" SHALL MEAN THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM.

12. "SMALL EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) EMPLOYED LESS THAN TWENTY-FIVE EMPLOYEES AT ANY ONE TIME IN THE STATE THROUGHOUT THE PREVIOUS CALENDAR YEAR, OR (II) HAS BEEN IN BUSINESS LESS THAN TWO YEARS, OR BOTH ITEMS (I) AND (II), BUT THAT NOTIFIES THE DEPARTMENT THAT IT IS INTERESTED IN BEING A PARTICIPATING EMPLOYER.

13. "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING OF SECTION 219(F)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED BY AN ENROLLEE FROM A PARTICIPATING EMPLOYER DURING THE CALENDAR YEAR.

S 571. PROGRAM ESTABLISHED. A RETIREMENT SAVINGS PROGRAM IN THE FORM OF AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA, KNOWN AS THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM, IS HEREBY ESTABLISHED AND SHALL BE ADMINISTERED BY THE BOARD FOR THE PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR PRIVATE-SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST, AND PORTABLE MANNER.

S 572. COMPOSITION OF THE BOARD. THERE IS HEREBY CREATED THE NEW YORK STATE SECURE CHOICE SAVINGS BOARD.

1. THE BOARD SHALL CONSIST OF THE FOLLOWING SIX MEMBERS:

1 (A) THE COMMISSIONER, OR HIS OR HER DESIGNEE, WHO SHALL SERVE AS
2 CHAIR;

3 (B) THE STATE COMPTROLLER, OR HIS OR HER DESIGNEE;

4 (C) TWO PUBLIC REPRESENTATIVES WITH EXPERTISE IN RETIREMENT SAVINGS
5 PLAN ADMINISTRATION OR INVESTMENT, OR BOTH, APPOINTED BY THE GOVERNOR;

6 (D) A REPRESENTATIVE OF PARTICIPATING EMPLOYERS, APPOINTED BY THE
7 GOVERNOR; AND

8 (E) A REPRESENTATIVE OF ENROLLEES, APPOINTED BY THE GOVERNOR.

9 2. MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION BUT MAY BE
10 REIMBURSED FOR NECESSARY TRAVEL EXPENSES INCURRED IN CONNECTION WITH
11 THEIR BOARD DUTIES FROM FUNDS APPROPRIATED FOR THE PURPOSE.

12 3. THE INITIAL APPOINTMENTS FOR THE GOVERNOR'S APPOINTEES SHALL BE AS
13 FOLLOWS: ONE PUBLIC REPRESENTATIVE FOR FOUR YEARS; ONE PUBLIC REPRESENTATIVE
14 FOR TWO YEARS; THE REPRESENTATIVE OF PARTICIPATING EMPLOYERS FOR
15 THREE YEARS; AND THE REPRESENTATIVE OF ENROLLEES FOR ONE YEAR. THEREAFTER,
16 ALL THE GOVERNOR'S APPOINTEES SHALL BE FOR TERMS OF FOUR YEARS.

17 4. A VACANCY IN THE TERM OF AN APPOINTED BOARD MEMBER SHALL BE FILLED
18 FOR THE BALANCE OF THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL
19 APPOINTMENT.

20 5. EACH APPOINTMENT BY THE GOVERNOR SHALL BE SUBJECT TO APPROVAL BY
21 THE COMMISSIONER, WHO, UPON APPROVAL, SHALL CERTIFY HIS OR HER APPROVAL
22 TO THE SECRETARY OF STATE.

23 S 573. FIDUCIARY DUTY. THE BOARD, THE INDIVIDUAL MEMBERS OF THE BOARD,
24 THE TRUSTEES, ANY OTHER AGENTS APPOINTED OR ENGAGED BY THE BOARD, AND
25 ALL PERSONS SERVING AS PROGRAM STAFF SHALL DISCHARGE THEIR DUTIES WITH
26 RESPECT TO THE PROGRAM SOLELY IN THE INTEREST OF THE PROGRAM'S ENROLLEES
27 AND BENEFICIARIES AS FOLLOWS:

28 1. FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO ENROLLEES AND
29 BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE
30 PROGRAM;

31 2. BY INVESTING WITH THE CARE, SKILL, PRUDENCE, AND DILIGENCE UNDER
32 THE PREVAILING CIRCUMSTANCES THAT A PRUDENT PERSON ACTING IN A LIKE
33 CAPACITY AND FAMILIAR WITH THOSE MATTERS WOULD USE IN THE CONDUCT OF AN
34 ENTERPRISE OF A LIKE CHARACTER AND WITH LIKE AIMS; AND

35 3. BY USING ANY CONTRIBUTIONS PAID BY EMPLOYEES AND EMPLOYERS INTO THE
36 TRUST EXCLUSIVELY FOR THE PURPOSE OF PAYING BENEFITS TO THE ENROLLEES OF
37 THE PROGRAM, FOR THE COST OF ADMINISTRATION OF THE PROGRAM, AND FOR
38 INVESTMENTS MADE FOR THE BENEFIT OF THE PROGRAM.

39 S 574. DUTIES OF THE BOARD. IN ADDITION TO THE OTHER DUTIES AND
40 RESPONSIBILITIES STATED IN THIS ARTICLE, THE BOARD SHALL:

41 1. CAUSE THE PROGRAM TO BE DESIGNED, ESTABLISHED AND OPERATED IN A
42 MANNER THAT:

43 (A) ACCORDS WITH BEST PRACTICES FOR RETIREMENT SAVINGS VEHICLES;

44 (B) MAXIMIZES PARTICIPATION, SAVINGS, AND SOUND INVESTMENT PRACTICES;

45 (C) MAXIMIZES SIMPLICITY, INCLUDING EASE OF ADMINISTRATION FOR PARTICIPATING
46 EMPLOYERS AND ENROLLEES;

47 (D) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING INVESTMENT
48 FUNDS;

49 (E) ENSURES THE PORTABILITY OF BENEFITS; AND

50 (F) PROVIDES FOR THE DEACCUMULATION OF ENROLLEE ASSETS IN A MANNER
51 THAT MAXIMIZES FINANCIAL SECURITY IN RETIREMENT.

52 2. APPOINT A TRUSTEE TO THE IRA FUND IN COMPLIANCE WITH SECTION 408 OF
53 THE INTERNAL REVENUE CODE.

54 3. EXPLORE AND ESTABLISH INVESTMENT OPTIONS, SUBJECT TO THIS ARTICLE,
55 THAT OFFER EMPLOYEES RETURNS ON CONTRIBUTIONS AND THE CONVERSION OF

1 INDIVIDUAL RETIREMENT SAVINGS ACCOUNT BALANCES TO SECURE RETIREMENT
2 INCOME WITHOUT INCURRING DEBT OR LIABILITIES TO THE STATE.

3 4. ESTABLISH THE PROCESS BY WHICH INTEREST, INVESTMENT EARNINGS, AND
4 INVESTMENT LOSSES ARE ALLOCATED TO INDIVIDUAL PROGRAM ACCOUNTS ON A PRO
5 RATA BASIS AND ARE COMPUTED AT THE INTEREST RATE ON THE BALANCE OF AN
6 INDIVIDUAL'S ACCOUNT.

7 5. MAKE AND ENTER INTO CONTRACTS NECESSARY FOR THE ADMINISTRATION OF
8 THE PROGRAM AND FUND, INCLUDING, BUT NOT LIMITED TO, RETAINING AND
9 CONTRACTING WITH INVESTMENT MANAGERS, PRIVATE FINANCIAL INSTITUTIONS,
10 OTHER FINANCIAL AND SERVICE PROVIDERS, CONSULTANTS, ACTUARIES, COUNSEL,
11 AUDITORS, THIRD-PARTY ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECES-
12 SARY.

13 6. CONDUCT A REVIEW OF THE PERFORMANCE OF ANY INVESTMENT VENDORS EVERY
14 FOUR YEARS, INCLUDING, BUT NOT LIMITED TO, A REVIEW OF RETURNS, FEES,
15 AND CUSTOMER SERVICE. A COPY OF REVIEWS SHALL BE POSTED TO THE BOARD'S
16 INTERNET WEBSITE.

17 7. DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS NEEDED TO ADMINIS-
18 TER THE PROGRAM AND ASSEMBLE SUCH A STAFF, INCLUDING, AS NEEDED, EMPLOY-
19 ING STAFF, APPOINTING A PROGRAM ADMINISTRATOR, AND ENTERING INTO
20 CONTRACTS WITH THE COMMISSIONER TO MAKE EMPLOYEES OF THE DEPARTMENT
21 AVAILABLE TO ADMINISTER THE PROGRAM.

22 8. CAUSE MONEYS IN THE FUND TO BE HELD AND INVESTED AS POOLED INVEST-
23 MENTS DESCRIBED IN THIS ARTICLE, WITH A VIEW TO ACHIEVING COST SAVINGS
24 THROUGH EFFICIENCIES AND ECONOMIES OF SCALE.

25 9. EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN ENROLLEE IS ABLE TO
26 CONTRIBUTE A PORTION OF HIS OR HER WAGES TO THE PROGRAM FOR AUTOMATIC
27 DEPOSIT OF THOSE CONTRIBUTIONS AND THE PROCESS BY WHICH THE PARTICIPAT-
28 ING EMPLOYER PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT
29 TO FORWARD THOSE CONTRIBUTIONS AND RELATED INFORMATION TO THE PROGRAM,
30 INCLUDING, BUT NOT LIMITED TO, CONTRACTING WITH FINANCIAL SERVICE COMPA-
31 NIES AND THIRD-PARTY ADMINISTRATORS WITH THE CAPABILITY TO RECEIVE AND
32 PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR PAYROLL DEPOSIT
33 RETIREMENT SAVINGS ARRANGEMENTS OR SIMILAR ARRANGEMENTS.

34 10. DESIGN AND ESTABLISH THE PROCESS FOR ENROLLMENT INCLUDING THE
35 PROCESS BY WHICH AN EMPLOYEE CAN OPT NOT TO PARTICIPATE IN THE PROGRAM,
36 SELECT A CONTRIBUTION LEVEL, SELECT AN INVESTMENT OPTION, AND TERMINATE
37 PARTICIPATION IN THE PROGRAM.

38 11. EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN INDIVIDUAL MAY
39 VOLUNTARILY ENROLL IN AND MAKE CONTRIBUTIONS TO THE PROGRAM.

40 12. ACCEPT ANY GRANTS, APPROPRIATIONS, OR OTHER MONEYS FROM THE STATE,
41 ANY UNIT OF FEDERAL, STATE, OR LOCAL GOVERNMENT, OR ANY OTHER PERSON,
42 FIRM, PARTNERSHIP, OR CORPORATION SOLELY FOR DEPOSIT INTO THE FUND,
43 WHETHER FOR INVESTMENT OR ADMINISTRATIVE PURPOSES.

44 13. EVALUATE THE NEED FOR, AND PROCURE AS NEEDED, INSURANCE AGAINST
45 ANY AND ALL LOSS IN CONNECTION WITH THE PROPERTY, ASSETS, OR ACTIVITIES
46 OF THE PROGRAM, AND INDEMNIFY AS NEEDED EACH MEMBER OF THE BOARD FROM
47 PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER'S ACTION OR INACTION
48 AS A MEMBER OF THE BOARD.

49 14. MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE COSTS AND
50 EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION OF THE PROGRAM.
51 SUBJECT TO APPROPRIATION, THE STATE MAY PAY ADMINISTRATIVE COSTS ASSOCI-
52 ATED WITH THE CREATION AND MANAGEMENT OF THE PROGRAM UNTIL SUFFICIENT
53 ASSETS ARE AVAILABLE IN THE FUND FOR THAT PURPOSE. THEREAFTER, ALL
54 ADMINISTRATIVE COSTS OF THE FUND, INCLUDING REPAYMENT OF ANY START-UP
55 FUNDS PROVIDED BY THE STATE, SHALL BE PAID ONLY OUT OF MONEYS ON DEPOSIT
56 THEREIN. HOWEVER, PRIVATE FUNDS OR FEDERAL FUNDING RECEIVED IN ORDER TO

1 IMPLEMENT THE PROGRAM UNTIL THE FUND IS SELF-SUSTAINING SHALL NOT BE
2 REPAID UNLESS THOSE FUNDS WERE OFFERED CONTINGENT UPON THE PROMISE OF
3 SUCH REPAYMENT. THE BOARD SHALL KEEP ANNUAL ADMINISTRATIVE EXPENSES AS
4 LOW AS POSSIBLE, BUT IN NO EVENT SHALL THEY EXCEED 0.75% OF THE TOTAL
5 TRUST BALANCE.

6 15. ALLOCATE ADMINISTRATIVE FEES TO INDIVIDUAL RETIREMENT ACCOUNTS IN
7 THE PROGRAM ON A PRO RATA BASIS.

8 16. SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN ACCORDANCE WITH
9 LIMITS ESTABLISHED FOR IRAS BY THE INTERNAL REVENUE CODE.

10 17. FACILITATE EDUCATION AND OUTREACH TO EMPLOYERS AND EMPLOYEES.

11 18. FACILITATE COMPLIANCE BY THE PROGRAM WITH ALL APPLICABLE REQUIRE-
12 MENTS FOR THE PROGRAM UNDER THE INTERNAL REVENUE CODE, INCLUDING TAX
13 QUALIFICATION REQUIREMENTS OR ANY OTHER APPLICABLE LAW AND ACCOUNTING
14 REQUIREMENTS.

15 19. CARRY OUT THE DUTIES AND OBLIGATIONS OF THE PROGRAM IN AN EFFEC-
16 TIVE, EFFICIENT, AND LOW-COST MANNER.

17 20. EXERCISE ANY AND ALL OTHER POWERS REASONABLY NECESSARY FOR THE
18 EFFECTUATION OF THE PURPOSES, OBJECTIVES, AND PROVISIONS OF THIS ARTICLE
19 PERTAINING TO THE PROGRAM.

20 21. DEPOSIT INTO THE NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND
21 ALL GRANTS, GIFTS, DONATIONS, FEES, AND EARNINGS FROM INVESTMENTS FROM
22 THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND THAT ARE USED TO
23 RECOVER ADMINISTRATIVE COSTS. ALL EXPENSES OF THE BOARD SHALL BE PAID
24 FROM THE NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND.

25 S 575. RISK MANAGEMENT. THE BOARD SHALL ANNUALLY PREPARE AND ADOPT A
26 WRITTEN STATEMENT OF INVESTMENT POLICY THAT INCLUDES A RISK MANAGEMENT
27 AND OVERSIGHT PROGRAM. THIS INVESTMENT POLICY SHALL PROHIBIT THE BOARD,
28 PROGRAM, AND FUND FROM BORROWING FOR INVESTMENT PURPOSES. THE RISK
29 MANAGEMENT AND OVERSIGHT PROGRAM SHALL BE DESIGNED TO ENSURE THAT AN
30 EFFECTIVE RISK MANAGEMENT SYSTEM IS IN PLACE TO MONITOR THE RISK LEVELS
31 OF THE PROGRAM AND FUND PORTFOLIO, TO ENSURE THAT THE RISKS TAKEN ARE
32 PRUDENT AND PROPERLY MANAGED, TO PROVIDE AN INTEGRATED PROCESS FOR OVER-
33 ALL RISK MANAGEMENT, AND TO ASSESS INVESTMENT RETURNS AS WELL AS RISK TO
34 DETERMINE IF THE RISKS TAKEN ARE ADEQUATELY COMPENSATED COMPARED TO
35 APPLICABLE PERFORMANCE BENCHMARKS AND STANDARDS. THE BOARD SHALL CONSID-
36 ER THE STATEMENT OF INVESTMENT POLICY AND ANY CHANGES IN THE INVESTMENT
37 POLICY AT A PUBLIC HEARING.

38 S 576. INVESTMENT FIRMS. 1. THE BOARD SHALL ENGAGE, AFTER AN OPEN BID
39 PROCESS, AN INVESTMENT MANAGER OR MANAGERS TO INVEST THE FUND AND ANY
40 OTHER ASSETS OF THE PROGRAM. MONEYS IN THE FUND MAY BE INVESTED OR REIN-
41 VESTED BY THE COMMISSIONER OR MAY BE INVESTED IN WHOLE OR IN PART. IN
42 SELECTING THE INVESTMENT MANAGER OR MANAGERS, THE BOARD SHALL TAKE INTO
43 CONSIDERATION AND GIVE WEIGHT TO THE INVESTMENT MANAGER'S FEES AND
44 CHARGES IN ORDER TO REDUCE THE PROGRAM'S ADMINISTRATIVE EXPENSES.

45 2. THE INVESTMENT MANAGER OR MANAGERS SHALL COMPLY WITH ANY AND ALL
46 APPLICABLE FEDERAL AND STATE LAWS, RULES, AND REGULATIONS, AS WELL AS
47 ANY AND ALL RULES, POLICIES, AND GUIDELINES PROMULGATED BY THE BOARD
48 WITH RESPECT TO THE PROGRAM AND THE INVESTMENT OF THE FUND, INCLUDING,
49 BUT NOT LIMITED TO, THE INVESTMENT POLICY.

50 3. THE INVESTMENT MANAGER OR MANAGERS SHALL PROVIDE SUCH REPORTS AS
51 THE BOARD DEEMS NECESSARY FOR THE BOARD TO OVERSEE EACH INVESTMENT
52 MANAGER'S PERFORMANCE AND THE PERFORMANCE OF THE FUND.

53 S 577. INVESTMENT OPTIONS. 1. THE BOARD SHALL ESTABLISH AS AN INVEST-
54 MENT OPTION A LIFE-CYCLE FUND WITH A TARGET DATE BASED UPON THE AGE OF
55 THE ENROLLEE. THIS SHALL BE THE DEFAULT INVESTMENT OPTION FOR ENROLLEES

WHO FAIL TO ELECT AN INVESTMENT OPTION UNLESS AND UNTIL THE BOARD DESIGNATES BY RULE A NEW INVESTMENT OPTION AS THE DEFAULT.

2. THE BOARD MAY ALSO ESTABLISH ANY OR ALL OF THE FOLLOWING ADDITIONAL INVESTMENT OPTIONS:

(A) A CONSERVATIVE PRINCIPAL PROTECTION FUND;

(B) A GROWTH FUND;

(C) A SECURE RETURN FUND WHOSE PRIMARY OBJECTIVE IS THE PRESERVATION OF THE SAFETY OF PRINCIPAL AND THE PROVISION OF A STABLE AND LOW-RISK RATE OF RETURN; IF THE BOARD ELECTS TO ESTABLISH A SECURE RETURN FUND, THE BOARD MAY PROCURE ANY INSURANCE, ANNUITY, OR OTHER PRODUCT TO INSURE THE VALUE OF INDIVIDUALS' ACCOUNTS AND GUARANTEE A RATE OF RETURN; THE COST OF SUCH FUNDING MECHANISM SHALL BE PAID OUT OF THE FUND; UNDER NO CIRCUMSTANCES SHALL THE BOARD, PROGRAM, FUND, THE STATE, OR ANY PARTICIPATING EMPLOYER ASSUME ANY LIABILITY FOR INVESTMENT OR ACTUARIAL RISK; THE BOARD SHALL DETERMINE WHETHER TO ESTABLISH SUCH INVESTMENT OPTIONS BASED UPON AN ANALYSIS OF THEIR COST, RISK PROFILE, BENEFIT LEVEL, FEASIBILITY, AND EASE OF IMPLEMENTATION; OR

(D) AN ANNUITY FUND.

3. IF THE BOARD ELECTS TO ESTABLISH A SECURE RETURN FUND, THE BOARD SHALL THEN DETERMINE WHETHER SUCH OPTION SHALL REPLACE THE TARGET DATE OR LIFE-CYCLE FUND AS THE DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION. IN MAKING SUCH DETERMINATION, THE BOARD SHALL CONSIDER THE COST, RISK PROFILE, BENEFIT LEVEL, AND EASE OF ENROLLMENT IN THE SECURE RETURN FUND. THE BOARD MAY AT ANY TIME THEREAFTER REVISIT THIS QUESTION AND, BASED UPON AN ANALYSIS OF THESE CRITERIA, ESTABLISH EITHER THE SECURE RETURN FUND OR THE LIFE-CYCLE FUND AS THE DEFAULT FOR ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION.

S 578. BENEFITS. INTEREST, INVESTMENT EARNINGS, AND INVESTMENT LOSSES SHALL BE ALLOCATED TO INDIVIDUAL PROGRAM ACCOUNTS AS ESTABLISHED BY THE BOARD PURSUANT TO THIS ARTICLE. AN INDIVIDUAL'S RETIREMENT SAVINGS BENEFIT UNDER THE PROGRAM SHALL BE AN AMOUNT EQUAL TO THE BALANCE IN THE INDIVIDUAL'S PROGRAM ACCOUNT ON THE DATE THE RETIREMENT SAVINGS BENEFIT BECOMES PAYABLE. THE STATE SHALL HAVE NO LIABILITY FOR THE PAYMENT OF ANY BENEFIT TO ANY PARTICIPANT IN THE PROGRAM.

S 579. EMPLOYER AND EMPLOYEE INFORMATION PACKETS AND DISCLOSURE FORMS. 1. PRIOR TO THE OPENING OF THE PROGRAM FOR ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO ALL EMPLOYERS AN EMPLOYER INFORMATION PACKET AND AN EMPLOYEE INFORMATION PACKET, WHICH SHALL INCLUDE BACKGROUND INFORMATION ON THE PROGRAM, APPROPRIATE DISCLOSURES FOR EMPLOYEES, AND INFORMATION REGARDING THE VENDOR INTERNET WEBSITE DESCRIBED.

2. THE BOARD SHALL PROVIDE FOR THE CONTENTS OF BOTH THE EMPLOYEE INFORMATION PACKET AND THE EMPLOYER INFORMATION PACKET.

3. THE EMPLOYEE INFORMATION PACKET SHALL INCLUDE A DISCLOSURE FORM. THE DISCLOSURE FORM SHALL EXPLAIN, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

(A) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING CONTRIBUTIONS TO THE PROGRAM;

(B) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE PROGRAM;

(C) HOW TO OPT OUT OF THE PROGRAM;

(D) HOW TO PARTICIPATE IN THE PROGRAM WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS OTHER THAN THREE PERCENT;

(E) THE PROCESS FOR WITHDRAWAL OF RETIREMENT SAVINGS;

(F) HOW TO OBTAIN ADDITIONAL INFORMATION ABOUT THE PROGRAM;

(G) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD CONTACT FINANCIAL ADVISORS, THAT PARTICIPATING EMPLOYERS ARE NOT IN A POSITION TO PROVIDE

1 FINANCIAL ADVICE, AND THAT PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR
2 DECISIONS EMPLOYEES MAKE PURSUANT TO THIS ARTICLE;

3 (H) THAT THE PROGRAM IS NOT AN EMPLOYER-SPONSORED RETIREMENT PLAN; AND

4 (I) THAT THE PROGRAM FUND IS NOT GUARANTEED BY THE STATE.

5 4. THE EMPLOYEE INFORMATION PACKET SHALL ALSO INCLUDE A FORM FOR AN
6 EMPLOYEE TO NOTE HIS OR HER DECISION TO OPT OUT OF PARTICIPATION IN THE
7 PROGRAM OR ELECT TO PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS
8 OTHER THAN THREE PERCENT.

9 5. PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE INFORMATION PACK-
10 ET TO EMPLOYEES UPON LAUNCH OF THE PROGRAM. PARTICIPATING EMPLOYERS
11 SHALL SUPPLY THE EMPLOYEE INFORMATION PACKET TO NEW EMPLOYEES AT THE
12 TIME OF HIRING, AND NEW EMPLOYEES MAY OPT OUT OF PARTICIPATION IN THE
13 PROGRAM OR ELECT TO PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS
14 OTHER THAN THREE PERCENT AT THAT TIME.

15 S 580. PROGRAM IMPLEMENTATION AND ENROLLMENT. EXCEPT AS OTHERWISE
16 PROVIDED IN THIS ARTICLE, THE PROGRAM SHALL BE IMPLEMENTED, AND ENROLL-
17 MENT OF EMPLOYEES SHALL BEGIN, WITHIN TWENTY-FOUR MONTHS AFTER THE
18 EFFECTIVE DATE OF THIS ARTICLE. THE PROVISIONS OF THIS SECTION SHALL BE
19 IN FORCE AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT.

20 1. EACH EMPLOYER SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS
21 ARRANGEMENT TO ALLOW EACH EMPLOYEE TO PARTICIPATE IN THE PROGRAM AT MOST
22 NINE MONTHS AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT.

23 2. EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PROGRAM EACH OF THEIR
24 EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION IN THE PROGRAM USING
25 THE FORM DESCRIBED IN THIS ARTICLE AND SHALL PROVIDE PAYROLL DEDUCTION
26 RETIREMENT SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND DEPOSIT, ON
27 BEHALF OF SUCH EMPLOYEES, THESE FUNDS INTO THE PROGRAM. SMALL EMPLOYERS
28 MAY, BUT ARE NOT REQUIRED TO, PROVIDE PAYROLL DEDUCTION RETIREMENT
29 SAVINGS ARRANGEMENTS FOR EACH EMPLOYEE WHO ELECTS TO PARTICIPATE IN THE
30 PROGRAM.

31 3. ENROLLEES SHALL HAVE THE ABILITY TO SELECT A CONTRIBUTION LEVEL
32 INTO THE FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR
33 AS A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S TAXA-
34 BLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL REVENUE CODE. ENROL-
35 LEES MAY CHANGE THEIR CONTRIBUTION LEVEL AT ANY TIME, SUBJECT TO RULES
36 PROMULGATED BY THE BOARD. IF AN ENROLLEE FAILS TO SELECT A CONTRIBUTION
37 LEVEL USING THE FORM DESCRIBED IN THIS ARTICLE, THEN HE OR SHE SHALL
38 CONTRIBUTE THREE PERCENT OF HIS OR HER WAGES TO THE PROGRAM, PROVIDED
39 THAT SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL CONTRIB-
40 UTIONS TO IRAS FOR THE YEAR TO EXCEED THE DEDUCTIBLE AMOUNT FOR THE
41 ENROLLEE'S TAXABLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL
42 REVENUE CODE.

43 4. ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE PERMITTED
44 INVESTMENT OPTIONS LISTED IN THIS ARTICLE. ENROLLEES MAY CHANGE THEIR
45 INVESTMENT OPTION AT ANY TIME, SUBJECT TO RULES PROMULGATED BY THE
46 BOARD. IN THE EVENT THAT AN ENROLLEE FAILS TO SELECT AN INVESTMENT
47 OPTION, THAT ENROLLEE SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED
48 BY THE BOARD AS THE DEFAULT UNDER THIS ARTICLE. IF THE BOARD HAS NOT
49 SELECTED A DEFAULT INVESTMENT OPTION UNDER THIS ARTICLE, THEN AN ENROL-
50 LEE WHO FAILS TO SELECT AN INVESTMENT OPTION SHALL BE PLACED IN THE
51 LIFE-CYCLE FUND INVESTMENT OPTION.

52 5. FOLLOWING INITIAL IMPLEMENTATION OF THE PROGRAM PURSUANT TO THIS
53 SECTION, AT LEAST ONCE EVERY YEAR, PARTICIPATING EMPLOYERS SHALL DESIG-
54 NATE AN OPEN ENROLLMENT PERIOD DURING WHICH EMPLOYEES WHO PREVIOUSLY
55 OPTED OUT OF THE PROGRAM MAY ENROLL IN THE PROGRAM.

6. AN EMPLOYEE WHO OPTS OUT OF THE PROGRAM WHO SUBSEQUENTLY WANTS TO PARTICIPATE THROUGH THE PARTICIPATING EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT MAY ONLY ENROLL DURING THE PARTICIPATING EMPLOYER'S DESIGNATED OPEN ENROLLMENT PERIOD OR IF PERMITTED BY THE PARTICIPATING EMPLOYER AT AN EARLIER TIME.

7. EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO SET UP ANY TYPE OF EMPLOYER-SPONSORED RETIREMENT PLAN OR TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

8. AN EMPLOYEE MAY TERMINATE HIS OR HER PARTICIPATION IN THE PROGRAM AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD.

9. THE BOARD SHALL ESTABLISH AND MAINTAIN AN INTERNET WEBSITE DESIGNED TO ASSIST EMPLOYERS IN IDENTIFYING PRIVATE SECTOR PROVIDERS OF RETIREMENT ARRANGEMENTS THAT CAN BE SET UP BY THE EMPLOYER RATHER THAN ALLOWING EMPLOYEE PARTICIPATION IN THE PROGRAM UNDER THIS ARTICLE; HOWEVER, THE BOARD SHALL ONLY ESTABLISH AND MAINTAIN AN INTERNET WEBSITE UNDER THIS SUBSECTION IF THERE IS SUFFICIENT INTEREST IN SUCH AN INTERNET WEBSITE BY PRIVATE SECTOR PROVIDERS AND IF THE PRIVATE SECTOR PROVIDERS FURNISH THE FUNDING NECESSARY TO ESTABLISH AND MAINTAIN THE INTERNET WEBSITE. THE BOARD MUST PROVIDE PUBLIC NOTICE OF THE AVAILABILITY OF AND THE PROCESS FOR INCLUSION ON THE INTERNET WEBSITE BEFORE IT BECOMES PUBLICLY AVAILABLE. THIS INTERNET WEBSITE MUST BE AVAILABLE TO THE PUBLIC BEFORE THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, AND THE INTERNET WEBSITE ADDRESS MUST BE INCLUDED ON ANY INTERNET WEBSITE POSTING OR OTHER MATERIALS REGARDING THE PROGRAM OFFERED TO THE PUBLIC BY THE BOARD.

S 581. PAYMENTS. EMPLOYEE CONTRIBUTIONS DEDUCTED BY THE PARTICIPATING EMPLOYER THROUGH PAYROLL DEDUCTION SHALL BE PAID BY THE PARTICIPATING EMPLOYER TO THE FUND USING ONE OR MORE PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENTS ESTABLISHED BY THE BOARD UNDER THIS ARTICLE, EITHER:

1. ON OR BEFORE THE LAST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE COMPENSATION OTHERWISE WOULD HAVE BEEN PAYABLE TO THE EMPLOYEE IN CASH; OR

2. BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD FOR MAKING SUCH PAYMENTS, BUT NOT LATER THAN THE DUE DATE FOR THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD RELATING TO COLLECTION OF INCOME TAX AT SOURCE ON WAGES OR FOR THE DEPOSIT OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE SYSTEM FOR THE PAYROLL PERIOD TO WHICH SUCH PAYMENTS RELATE.

S 582. DUTY AND LIABILITY OF THE STATE. 1. THE STATE SHALL HAVE NO DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY RETIREMENT SAVINGS BENEFITS ACCRUED BY ANY INDIVIDUAL UNDER THE PROGRAM. ANY FINANCIAL LIABILITY FOR THE PAYMENT OF RETIREMENT SAVINGS BENEFITS IN EXCESS OF FUNDS AVAILABLE UNDER THE PROGRAM SHALL BE BORNE SOLELY BY THE ENTITIES WITH WHOM THE BOARD CONTRACTS TO PROVIDE INSURANCE TO PROTECT THE VALUE OF THE PROGRAM.

2. NO STATE BOARD, COMMISSION, OR AGENCY, OR ANY OFFICER, EMPLOYEE, OR MEMBER THEREOF IS LIABLE FOR ANY LOSS OR DEFICIENCY RESULTING FROM PARTICULAR INVESTMENTS SELECTED UNDER THIS ARTICLE, EXCEPT FOR ANY LIABILITY THAT ARISES OUT OF A BREACH OF FIDUCIARY DUTY.

S 583. DUTY AND LIABILITY OF PARTICIPATING EMPLOYERS. 1. PARTICIPATING EMPLOYERS SHALL NOT HAVE ANY LIABILITY FOR AN EMPLOYEE'S DECISION TO PARTICIPATE IN, OR OPT OUT OF, THE PROGRAM OR FOR THE INVESTMENT DECISIONS OF THE BOARD OR OF ANY ENROLLEE.

2. A PARTICIPATING EMPLOYER SHALL NOT BE A FIDUCIARY, OR CONSIDERED TO BE A FIDUCIARY, OVER THE PROGRAM. A PARTICIPATING EMPLOYER SHALL NOT BEAR RESPONSIBILITY FOR THE ADMINISTRATION, INVESTMENT, OR INVESTMENT PERFORMANCE OF THE PROGRAM. A PARTICIPATING EMPLOYER SHALL NOT BE LIABLE WITH REGARD TO INVESTMENT RETURNS, PROGRAM DESIGN, AND BENEFITS PAID TO PROGRAM PARTICIPANTS.

S 584. AUDIT AND REPORTS. 1. THE BOARD SHALL ANNUALLY SUBMIT:

(A) AN AUDITED FINANCIAL REPORT, PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, ON THE OPERATIONS OF THE PROGRAM DURING EACH CALENDAR YEAR BY JULY FIRST OF THE FOLLOWING YEAR TO THE GOVERNOR, THE COMPTROLLER, THE COMMISSIONER AND THE SENATE AND ASSEMBLY; AND

(B) A REPORT PREPARED BY THE BOARD, WHICH SHALL INCLUDE, BUT IS NOT LIMITED TO, A SUMMARY OF THE BENEFITS PROVIDED BY THE PROGRAM, INCLUDING THE NUMBER OF ENROLLEES IN THE PROGRAM, THE PERCENTAGE AND AMOUNTS OF INVESTMENT OPTIONS AND RATES OF RETURN, AND SUCH OTHER INFORMATION THAT IS RELEVANT TO MAKE A FULL, FAIR, AND EFFECTIVE DISCLOSURE OF THE OPERATIONS OF THE PROGRAM AND THE FUND. THE ANNUAL AUDIT SHALL BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND SHALL INCLUDE, BUT IS NOT LIMITED TO, DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF OUTSIDE CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER PERSONS WHO ARE NOT STATE EMPLOYEES FOR THE ADMINISTRATION OF THE PROGRAM.

2. IN ADDITION TO ANY OTHER STATEMENTS OR REPORTS REQUIRED BY LAW, THE BOARD SHALL PROVIDE PERIODIC REPORTS AT LEAST ANNUALLY TO PARTICIPATING EMPLOYERS, REPORTING THE NAMES OF EACH ENROLLEE EMPLOYED BY THE PARTICIPATING EMPLOYER AND THE AMOUNTS OF CONTRIBUTIONS MADE BY THE PARTICIPATING EMPLOYER ON BEHALF OF EACH EMPLOYEE DURING THE REPORTING PERIOD, AS WELL AS TO ENROLLEES, REPORTING CONTRIBUTIONS AND INVESTMENT INCOME ALLOCATED TO, WITHDRAWALS FROM, AND BALANCES IN THEIR PROGRAM ACCOUNTS FOR THE REPORTING PERIOD. SUCH REPORTS MAY INCLUDE ANY OTHER INFORMATION REGARDING THE PROGRAM AS THE BOARD MAY DETERMINE.

S 585. PENALTIES. 1. AN EMPLOYER WHO FAILS WITHOUT REASONABLE CAUSE TO ENROLL AN EMPLOYEE IN THE PROGRAM WITHIN THE TIME PRESCRIBED UNDER THIS ARTICLE SHALL BE SUBJECT TO A PENALTY EQUAL TO:

(A) TWO HUNDRED FIFTY DOLLARS FOR EACH EMPLOYEE FOR EACH CALENDAR YEAR OR PORTION OF A CALENDAR YEAR DURING WHICH THE EMPLOYEE NEITHER WAS ENROLLED IN THE PROGRAM NOR HAD ELECTED OUT OF PARTICIPATION IN THE PROGRAM; OR

(B) FOR EACH CALENDAR YEAR BEGINNING AFTER THE DATE A PENALTY HAS BEEN ASSESSED WITH RESPECT TO AN EMPLOYEE, FIVE HUNDRED DOLLARS FOR ANY PORTION OF THAT CALENDAR YEAR DURING WHICH SUCH EMPLOYEE CONTINUES TO BE UNENROLLED WITHOUT ELECTING OUT OF PARTICIPATION IN THE PROGRAM.

2. AFTER DETERMINING THAT AN EMPLOYER IS SUBJECT TO PENALTY UNDER THIS SECTION FOR A CALENDAR YEAR, THE DEPARTMENT SHALL ISSUE A NOTICE OF PROPOSED ASSESSMENT TO SUCH EMPLOYER, STATING THE NUMBER OF EMPLOYEES FOR WHICH THE PENALTY IS PROPOSED UNDER THIS SECTION AND THE NUMBER OF EMPLOYEES FOR WHICH THE PENALTY IS PROPOSED UNDER THIS SECTION FOR SUCH CALENDAR YEAR, AND THE TOTAL AMOUNT OF PENALTIES PROPOSED. UPON THE EXPIRATION OF NINETY DAYS AFTER THE DATE ON WHICH A NOTICE OF PROPOSED ASSESSMENT WAS ISSUED, THE PENALTIES SPECIFIED THEREIN SHALL BE DEEMED ASSESSED, UNLESS THE EMPLOYER HAD FILED A PROTEST WITH THE DEPARTMENT UNDER THIS SECTION. IF, WITHIN NINETY DAYS AFTER THE DATE ON WHICH IT WAS ISSUED, A PROTEST OF A NOTICE OF PROPOSED ASSESSMENT IS FILED UNDER THIS SECTION, THE PENALTIES SPECIFIED THEREIN SHALL BE DEEMED ASSESSED UPON THE DATE WHEN THE DECISION OF THE DEPARTMENT WITH RESPECT TO THE PROTEST BECOMES FINAL.

1 3. A WRITTEN PROTEST AGAINST THE PROPOSED ASSESSMENT SHALL BE FILED
2 WITH THE DEPARTMENT IN SUCH FORM AS THE DEPARTMENT MAY BY RULE
3 PRESCRIBE, SETTING FORTH THE GROUNDS ON WHICH SUCH PROTEST IS BASED. IF
4 SUCH A PROTEST IS FILED WITHIN NINETY DAYS AFTER THE DATE THE NOTICE OF
5 PROPOSED ASSESSMENT IS ISSUED, THE DEPARTMENT SHALL RECONSIDER THE
6 PROPOSED ASSESSMENT AND SHALL GRANT THE EMPLOYER A HEARING. AS SOON AS
7 PRACTICABLE AFTER SUCH RECONSIDERATION AND HEARING, THE DEPARTMENT SHALL
8 ISSUE A NOTICE OF DECISION TO THE EMPLOYER, SETTING FORTH THE DEPART-
9 MENT'S FINDINGS OF FACT AND THE BASIS OF DECISION. THE DECISION OF THE
10 DEPARTMENT SHALL BECOME FINAL:

11 (A) IF NO ACTION FOR REVIEW OF THE DECISION IS COMMENCED, ON THE DATE
12 ON WHICH THE TIME FOR COMMENCEMENT OF SUCH REVIEW HAS EXPIRED; OR

13 (B) IF A TIMELY ACTION FOR REVIEW OF THE DECISION IS COMMENCED, ON THE
14 DATE ALL PROCEEDINGS IN COURT FOR THE REVIEW OF SUCH ASSESSMENT HAVE
15 TERMINATED OR THE TIME FOR THE TAKING THEREOF HAS EXPIRED WITHOUT SUCH
16 PROCEEDINGS BEING INSTITUTED.

17 4. AS SOON AS PRACTICABLE AFTER THE PENALTIES SPECIFIED IN A NOTICE OF
18 PROPOSED ASSESSMENT ARE DEEMED ASSESSED, THE DEPARTMENT SHALL GIVE
19 NOTICE TO THE EMPLOYER LIABLE FOR ANY UNPAID PORTION OF SUCH ASSESSMENT,
20 STATING THE AMOUNT DUE AND DEMANDING PAYMENT. IF AN EMPLOYER NEGLECTS OR
21 REFUSES TO PAY THE ENTIRE LIABILITY SHOWN ON THE NOTICE AND DEMAND WITH-
22 IN TEN DAYS AFTER THE NOTICE AND DEMAND IS ISSUED, THE UNPAID AMOUNT OF
23 THE LIABILITY SHALL BE A LIEN IN FAVOR OF THE STATE UPON ALL PROPERTY
24 AND RIGHTS TO PROPERTY, WHETHER REAL OR PERSONAL, BELONGING TO THE
25 EMPLOYER.

26 5. AN EMPLOYER WHO HAS OVERPAID A PENALTY ASSESSED UNDER THIS SECTION
27 MAY FILE A CLAIM FOR REFUND WITH THE DEPARTMENT. A CLAIM SHALL BE IN
28 WRITING IN SUCH FORM AS THE DEPARTMENT MAY BY RULE PRESCRIBE AND SHALL
29 STATE THE SPECIFIC GROUNDS UPON WHICH IT IS FOUNDED. AS SOON AS PRACTI-
30 CABLE AFTER A CLAIM FOR REFUND IS FILED, THE DEPARTMENT SHALL EXAMINE IT
31 AND EITHER ISSUE A REFUND OR ISSUE A NOTICE OF DENIAL. IF SUCH A PROTEST
32 IS FILED, THE DEPARTMENT SHALL RECONSIDER THE DENIAL AND GRANT THE
33 EMPLOYER A HEARING. AS SOON AS PRACTICABLE AFTER SUCH RECONSIDERATION
34 AND HEARING, THE DEPARTMENT SHALL ISSUE A NOTICE OF DECISION TO THE
35 EMPLOYER. THE NOTICE SHALL SET FORTH BRIEFLY THE DEPARTMENT'S FINDINGS
36 OF FACT AND THE BASIS OF DECISION IN EACH CASE DECIDED IN WHOLE OR IN
37 PART ADVERSELY TO THE EMPLOYER. A DENIAL OF A CLAIM FOR REFUND BECOMES
38 FINAL NINETY DAYS AFTER THE DATE OF ISSUANCE OF THE NOTICE OF THE DENIAL
39 EXCEPT FOR SUCH AMOUNTS DENIED AS TO WHICH THE EMPLOYER HAS FILED A
40 PROTEST WITH THE DEPARTMENT. IF A PROTEST HAS BEEN TIMELY FILED, THE
41 DECISION OF THE DEPARTMENT SHALL BECOME FINAL:

42 (A) IF NO ACTION FOR REVIEW OF THE DECISION IS COMMENCED ON THE DATE
43 ON WHICH THE TIME FOR COMMENCEMENT OF SUCH REVIEW HAS EXPIRED; OR

44 (B) IF A TIMELY ACTION FOR REVIEW OF THE DECISION IS COMMENCED ON THE
45 DATE ALL PROCEEDINGS IN COURT FOR THE REVIEW OF SUCH ASSESSMENT HAVE
46 TERMINATED OR THE TIME FOR THE TAKING THEREOF HAS EXPIRED WITHOUT SUCH
47 PROCEEDINGS BEING INSTITUTED.

48 6. NO NOTICE OF PROPOSED ASSESSMENT MAY BE ISSUED WITH RESPECT TO A
49 CALENDAR YEAR AFTER JUNE THIRTIETH OF THE FOURTH SUBSEQUENT CALENDAR
50 YEAR. NO CLAIM FOR REFUND MAY BE FILED MORE THAN ONE YEAR AFTER THE DATE
51 OF PAYMENT OF THE AMOUNT TO BE REFUNDED.

52 7. WHENEVER NOTICE IS REQUIRED BY THIS SECTION, IT MAY BE GIVEN OR
53 ISSUED BY MAILING IT BY FIRST-CLASS MAIL ADDRESSED TO THE PERSON
54 CONCERNED AT HIS OR HER LAST KNOWN ADDRESS.

55 8. ALL BOOKS AND RECORDS AND OTHER PAPERS AND DOCUMENTS RELEVANT TO
56 THE DETERMINATION OF ANY PENALTY DUE UNDER THIS SECTION SHALL, AT ALL

1 TIMES DURING BUSINESS HOURS OF THE DAY, BE SUBJECT TO INSPECTION BY THE
2 DEPARTMENT OR ITS DULY AUTHORIZED AGENTS AND EMPLOYEES.

3 9. THE DEPARTMENT MAY REQUIRE EMPLOYERS TO REPORT INFORMATION RELEVANT
4 TO THEIR COMPLIANCE WITH THIS ARTICLE ON TAX RETURNS AND FAILURE TO
5 PROVIDE THE REQUESTED INFORMATION ON A RETURN SHALL CAUSE SUCH RETURN TO
6 BE TREATED AS UNPROCESSABLE.

7 10. FOR PURPOSES OF ANY PROVISION OF STATE LAW ALLOWING THE DEPARTMENT
8 OR ANY OTHER AGENCY OF THIS STATE TO OFFSET AN AMOUNT OWED TO A TAXPAYER
9 AGAINST A TAX LIABILITY OF THAT TAXPAYER OR ALLOWING THE DEPARTMENT TO
10 OFFSET AN OVERPAYMENT OF TAX AGAINST ANY LIABILITY OWED TO THE STATE, A
11 PENALTY ASSESSED UNDER THIS SECTION SHALL BE DEEMED TO BE A TAX LIABIL-
12 ITY OF THE EMPLOYER AND ANY REFUND DUE TO AN EMPLOYER SHALL BE DEEMED TO
13 BE AN OVERPAYMENT OF TAX OF THE EMPLOYER.

14 11. EXCEPT AS PROVIDED IN THIS SUBSECTION, ALL INFORMATION RECEIVED BY
15 THE DEPARTMENT FROM RETURNS FILED BY AN EMPLOYER OR FROM ANY INVESTI-
16 GATION CONDUCTED UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE CONFIDEN-
17 TIAL, EXCEPT FOR OFFICIAL PURPOSES WITHIN THE DEPARTMENT OR PURSUANT TO
18 OFFICIAL PROCEDURES FOR COLLECTION OF PENALTIES ASSESSED UNDER THIS
19 ARTICLE. NOTHING CONTAINED IN THIS SUBSECTION SHALL PREVENT THE DIREC-
20 TOR FROM PUBLISHING OR MAKING AVAILABLE TO THE PUBLIC REASONABLE STATIS-
21 TICS CONCERNING THE OPERATION OF THIS ARTICLE WHEREIN THE CONTENTS OF
22 RETURNS ARE GROUPED INTO AGGREGATES IN SUCH A WAY THAT THE SPECIFIC
23 INFORMATION OF ANY EMPLOYER SHALL NOT BE DISCLOSED. NOTHING CONTAINED IN
24 THIS SUBSECTION SHALL PREVENT THE DIRECTOR FROM DIVULGING INFORMATION TO
25 AN AUTHORIZED REPRESENTATIVE OF THE EMPLOYER OR TO ANY PERSON PURSUANT
26 TO A REQUEST OR AUTHORIZATION MADE BY THE EMPLOYER OR BY AN AUTHORIZED
27 REPRESENTATIVE OF THE EMPLOYER.

28 12. CIVIL PENALTIES AND FEES COLLECTED UNDER THIS ARTICLE SHALL BE
29 DEPOSITED WITH THE DEPARTMENT OF TAXATION AND FINANCE FOR PURPOSES DEDI-
30 CATED TO THE ADMINISTRATION OF THE PROGRAM.

31 13. THE DEPARTMENT MAY CHARGE THE BOARD A REASONABLE FEE FOR ITS COSTS
32 IN PERFORMING ITS DUTIES UNDER THIS SECTION TO THE EXTENT THAT SUCH
33 COSTS HAVE NOT BEEN RECOVERED FROM PENALTIES IMPOSED UNDER THIS SECTION.

34 14. THIS SECTION SHALL BECOME OPERATIVE NINE MONTHS AFTER THE BOARD
35 NOTIFIES THE DIRECTOR THAT THE PROGRAM HAS BEEN IMPLEMENTED. UPON
36 RECEIPT OF SUCH NOTIFICATION FROM THE BOARD, THE DEPARTMENT SHALL IMME-
37 DIATELY POST ON ITS INTERNET WEBSITE A NOTICE STATING THAT THIS SECTION
38 IS OPERATIVE AND THE DATE THAT IT IS FIRST OPERATIVE. THIS NOTICE SHALL
39 INCLUDE A STATEMENT THAT RATHER THAN ENROLLING EMPLOYEES IN THE PROGRAM
40 UNDER THIS ARTICLE, EMPLOYERS MAY SPONSOR AN ALTERNATIVE ARRANGEMENT.

41 S 586. DELAYED IMPLEMENTATION. IF THE BOARD DOES NOT OBTAIN ADEQUATE
42 FUNDS TO IMPLEMENT THE PROGRAM WITHIN THE TIME FRAME SET FORTH UNDER
43 THIS ARTICLE, THE BOARD MAY DELAY THE IMPLEMENTATION OF THE PROGRAM.

44 S 587. FEDERAL CONSIDERATIONS. THE BOARD SHALL REQUEST IN WRITING AN
45 OPINION OR RULING FROM THE APPROPRIATE ENTITY WITH JURISDICTION OVER THE
46 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT REGARDING THE APPLICA-
47 BILITY OF THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT TO THE
48 PROGRAM. THE BOARD MAY NOT IMPLEMENT THE PROGRAM IF THE IRA ARRANGEMENTS
49 OFFERED UNDER THE PROGRAM FAIL TO QUALIFY FOR THE FAVORABLE FEDERAL
50 INCOME TAX TREATMENT ORDINARILY ACCORDED TO IRAS UNDER THE INTERNAL
51 REVENUE CODE OR IF IT IS DETERMINED THAT THE PROGRAM IS AN EMPLOYEE
52 BENEFIT PLAN AND STATE OR EMPLOYER LIABILITY IS ESTABLISHED UNDER THE
53 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT.

54 S 3. The state finance law is amended by adding two new sections 99-x
55 and 99-y to read as follows:

1 S 99-X. NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND. 1. THERE
2 IS HEREBY ESTABLISHED WITHIN THE CUSTODY OF THE STATE COMPTROLLER, OR
3 HIS OR HER DESIGNEE, IN CONSULTATION WITH THE NEW YORK STATE SECURE
4 CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE KNOWN AS THE NEW YORK
5 STATE SECURE CHOICE SAVINGS PROGRAM FUND.

6 2. THE FUND SHALL INCLUDE THE INDIVIDUAL RETIREMENT ACCOUNTS OF ENROL-
7 LEES, WHICH SHALL BE ACCOUNTED FOR AS INDIVIDUAL ACCOUNTS.

8 3. MONEYS IN THE FUND SHALL CONSIST OF MONEYS RECEIVED FROM ENROLLEES
9 AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC PAYROLL DEDUCTIONS AND
10 CONTRIBUTIONS TO SAVINGS MADE UNDER THE NEW YORK STATE SECURE CHOICE
11 SAVINGS PROGRAM PURSUANT TO ARTICLE 14-C OF THE RETIREMENT AND SOCIAL
12 SECURITY LAW.

13 4. THE FUND SHALL BE OPERATED IN A MANNER DETERMINED BY THE NEW YORK
14 STATE SECURE CHOICE SAVINGS PROGRAM BOARD, PROVIDED THAT THE FUND IS
15 OPERATED SO THAT THE ACCOUNTS OF ENROLLEES ESTABLISHED UNDER THE PROGRAM
16 MEET THE REQUIREMENTS FOR IRAS UNDER THE INTERNAL REVENUE CODE.

17 5. THE AMOUNTS DEPOSITED IN THE FUND SHALL NOT CONSTITUTE PROPERTY OF
18 THE STATE AND THE FUND SHALL NOT BE CONSTRUED TO BE A DEPARTMENT, INSTI-
19 TUTION, OR AGENCY OF THE STATE. AMOUNTS ON DEPOSIT IN THE FUND SHALL NOT
20 BE COMMINGLED WITH STATE FUNDS AND THE STATE SHALL HAVE NO CLAIM TO OR
21 AGAINST, OR INTEREST IN, SUCH FUNDS.

22 S 99-Y. NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND. 1. THERE IS
23 HEREBY ESTABLISHED WITHIN THE CUSTODY OF THE STATE COMPTROLLER, OR HIS
24 OR HER DESIGNEE, IN CONSULTATION WITH THE NEW YORK STATE SECURE CHOICE
25 SAVINGS PROGRAM BOARD, A NEW FUND TO BE KNOWN AS THE NEW YORK STATE
26 SECURE CHOICE ADMINISTRATIVE FUND.

27 2. THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD SHALL USE
28 MONEYS IN THE ADMINISTRATIVE FUND TO PAY FOR ADMINISTRATIVE EXPENSES IT
29 INCURS IN THE PERFORMANCE OF ITS DUTIES UNDER THE NEW YORK STATE SECURE
30 CHOICE SAVINGS PROGRAM PURSUANT TO ARTICLE 14-C OF THE RETIREMENT AND
31 SOCIAL SECURITY LAW.

32 3. THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD SHALL USE
33 MONEYS IN THE ADMINISTRATIVE FUND TO COVER START-UP ADMINISTRATIVE
34 EXPENSES IT INCURS IN THE PERFORMANCE OF ITS DUTIES UNDER ARTICLE 14-C
35 OF THE RETIREMENT AND SOCIAL SECURITY LAW.

36 4. THE ADMINISTRATIVE FUND MAY RECEIVE ANY GRANTS OR OTHER MONEYS
37 DESIGNATED FOR ADMINISTRATIVE PURPOSES FROM THE STATE, OR ANY UNIT OF
38 FEDERAL OR LOCAL GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR
39 CORPORATION. ANY INTEREST EARNINGS THAT ARE ATTRIBUTABLE TO MONEYS IN
40 THE ADMINISTRATIVE FUND MUST BE DEPOSITED INTO THE ADMINISTRATIVE FUND.

41 S 4. This act shall take effect immediately.