

8332--C

2015-2016 Regular Sessions

I N A S S E M B L Y

August 5, 2015

Introduced by M. of A. RODRIGUEZ, COOK, MONTESANO, SEPULVEDA, RICHARDSON, MAYER, ROBINSON, SOLAGES, DILAN, PRETLOW, PICHARDO, RIVERA, BLAKE, O'DONNELL, NOLAN, BENEDETTO, ROZIC, ARROYO, TITONE, DAVILA, JOYNER, FARRELL, DenDEKKER, HOOPER, LINARES, WALKER, GOTTFRIED, AUBRY, SANTABARBARA, GUNTHER, PERRY, LUPARDO, HUNTER, BICHOTTE, CRESPO, HARRIS, JEAN-PIERRE, BRAUNSTEIN -- Multi-Sponsored by -- M. of A. BRENNAN, BUCHWALD, CERETTO, CROUCH, CURRAN, ENGLEBRIGHT, GLICK, HYNDMAN, LENTOL, LOPEZ, McDONOUGH, McLAUGHLIN, RA, SIMANOWITZ, SKARTADOS, STECK, THIELE -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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.

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

LBD11645-06-6

1 574. DUTIES OF THE BOARD.
2 575. RISK MANAGEMENT.
3 576. INVESTMENT FIRMS.
4 577. INVESTMENT OPTIONS.
5 578. BENEFITS.
6 579. EMPLOYER AND EMPLOYEE INFORMATION PACKETS AND DISCLOSURE
7 FORMS.
8 580. PROGRAM IMPLEMENTATION AND ENROLLMENT.
9 581. PAYMENTS.
10 582. DUTY AND LIABILITY OF THE STATE.
11 583. DUTY AND LIABILITY OF PARTICIPATING EMPLOYERS.
12 584. AUDIT AND REPORTS.
13 585. PENALTIES.
14 586. DELAYED IMPLEMENTATION.
15 587. FEDERAL CONSIDERATIONS.

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

19 1. "BOARD" SHALL MEAN THE NEW YORK SECURE CHOICE SAVINGS BOARD ESTAB-
20 LISHED UNDER THIS ARTICLE.

21 2. "SUPERINTENDENT" SHALL MEAN THE SUPERINTENDENT OF THE DEPARTMENT OF
22 FINANCIAL SERVICES.

23 2-A. "COMPTROLLER" SHALL MEAN THE OFFICE OF THE STATE COMPTROLLER.

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

27 4. "EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSINESS,
28 INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK STATE,
29 WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) HAS AT NO TIME DURING THE
30 PREVIOUS CALENDAR YEAR EMPLOYED FEWER THAN TWENTY-FIVE EMPLOYEES IN THE
31 STATE, (II) HAS BEEN IN BUSINESS AT LEAST TWO YEARS, AND (III) HAS NOT
32 OFFERED A QUALIFIED RETIREMENT PLAN, INCLUDING, BUT NOT LIMITED TO, A
33 PLAN QUALIFIED UNDER SECTIONS 401(A), 401(K), 403(A), 403(B), 408(K),
34 408(P) OR 457(B) OF THE INTERNAL REVENUE CODE OF 1986 IN THE PRECEDING
35 TWO YEARS.

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

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

39 7. "INTERNAL REVENUE CODE" SHALL MEAN THE INTERNAL REVENUE CODE OF
40 1986, OR ANY SUCCESSOR LAW, IN EFFECT FOR THE CALENDAR YEAR.

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

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

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

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

51 12. "SMALL EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSI-
52 NESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK
53 STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) EMPLOYED LESS THAN
54 TWENTY-FIVE EMPLOYEES AT ANY ONE TIME IN THE STATE THROUGHOUT THE PREVI-
55 OUS CALENDAR YEAR, OR (II) HAS BEEN IN BUSINESS LESS THAN TWO YEARS, OR

BOTH ITEMS (I) AND (II), BUT THAT NOTIFIES THE COMPTROLLER 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 NINE MEMBERS:

(A) THE STATE COMPTROLLER, OR HIS OR HER DESIGNEE, WHO SHALL SERVE AS CHAIR;

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

(C) A REPRESENTATIVE OF PARTICIPATING EMPLOYERS, APPOINTED BY THE GOVERNOR;

(D) A REPRESENTATIVE OF ENROLLEES, APPOINTED BY THE GOVERNOR;

(E) TWO DESIGNEES APPOINTED BY THE SPEAKER OF THE ASSEMBLY; AND

(F) TWO DESIGNEES APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE.

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

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

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

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

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

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

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

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

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

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

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

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

5 (C) MAXIMIZES SIMPLICITY, INCLUDING EASE OF ADMINISTRATION FOR PARTIC-
6 IPATING EMPLOYERS AND ENROLLEES;

7 (D) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING INVESTMENT
8 FUNDS;

9 (E) ENSURES THE PORTABILITY OF BENEFITS; AND

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

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

14 3. EXPLORE AND ESTABLISH INVESTMENT OPTIONS, SUBJECT TO THIS ARTICLE,
15 THAT OFFER EMPLOYEES RETURNS ON CONTRIBUTIONS AND THE CONVERSION OF
16 INDIVIDUAL RETIREMENT SAVINGS ACCOUNT BALANCES TO SECURE RETIREMENT
17 INCOME WITHOUT INCURRING DEBT OR LIABILITIES TO THE STATE.

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

22 5. MAKE AND ENTER INTO CONTRACTS NECESSARY FOR THE ADMINISTRATION OF
23 THE PROGRAM AND FUND, INCLUDING, BUT NOT LIMITED TO, RETAINING AND
24 CONTRACTING WITH INVESTMENT MANAGERS, PRIVATE FINANCIAL INSTITUTIONS,
25 OTHER FINANCIAL AND SERVICE PROVIDERS, CONSULTANTS, ACTUARIES, COUNSEL,
26 AUDITORS, THIRD-PARTY ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECES-
27 SARY.

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

32 7. DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS NEEDED TO ADMINIS-
33 TER THE PROGRAM AND ASSEMBLE SUCH A STAFF, INCLUDING, AS NEEDED, EMPLOY-
34 ING STAFF, APPOINTING A PROGRAM ADMINISTRATOR, AND ENTERING INTO
35 CONTRACTS WITH THE COMPTROLLER TO MAKE EMPLOYEES OF THE OFFICE OF THE
36 COMPTROLLER AVAILABLE TO ADMINISTER THE PROGRAM.

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

40 9. EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN ENROLLEE IS ABLE TO
41 CONTRIBUTE A PORTION OF HIS OR HER WAGES TO THE PROGRAM FOR AUTOMATIC
42 DEPOSIT OF THOSE CONTRIBUTIONS AND THE PROCESS BY WHICH THE PARTICIPAT-
43 ING EMPLOYER PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT
44 TO FORWARD THOSE CONTRIBUTIONS AND RELATED INFORMATION TO THE PROGRAM,
45 INCLUDING, BUT NOT LIMITED TO, CONTRACTING WITH FINANCIAL SERVICE COMPA-
46 NIES AND THIRD-PARTY ADMINISTRATORS WITH THE CAPABILITY TO RECEIVE AND
47 PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR PAYROLL DEPOSIT
48 RETIREMENT SAVINGS ARRANGEMENTS OR SIMILAR ARRANGEMENTS.

49 10. DESIGN AND ESTABLISH THE PROCESS FOR ENROLLMENT INCLUDING THE
50 PROCESS BY WHICH AN EMPLOYEE CAN OPT NOT TO PARTICIPATE IN THE PROGRAM,
51 SELECT A CONTRIBUTION LEVEL, SELECT AN INVESTMENT OPTION, AND TERMINATE
52 PARTICIPATION IN THE PROGRAM.

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

55 12. ACCEPT ANY GRANTS, APPROPRIATIONS, OR OTHER MONEYS FROM THE STATE,
56 ANY UNIT OF FEDERAL, STATE, OR LOCAL GOVERNMENT, OR ANY OTHER PERSON,

1 FIRM, PARTNERSHIP, OR CORPORATION SOLELY FOR DEPOSIT INTO THE FUND,
2 WHETHER FOR INVESTMENT OR ADMINISTRATIVE PURPOSES.

3 13. EVALUATE THE NEED FOR, AND PROCURE AS NEEDED, INSURANCE AGAINST
4 ANY AND ALL LOSS IN CONNECTION WITH THE PROPERTY, ASSETS, OR ACTIVITIES
5 OF THE PROGRAM, AND INDEMNIFY AS NEEDED EACH MEMBER OF THE BOARD FROM
6 PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER'S ACTION OR INACTION
7 AS A MEMBER OF THE BOARD.

8 14. MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE COSTS AND
9 EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION OF THE PROGRAM.
10 SUBJECT TO APPROPRIATION, THE STATE MAY PAY ADMINISTRATIVE COSTS ASSOCI-
11 ATED WITH THE CREATION AND MANAGEMENT OF THE PROGRAM UNTIL SUFFICIENT
12 ASSETS ARE AVAILABLE IN THE FUND FOR THAT PURPOSE. THEREAFTER, ALL
13 ADMINISTRATIVE COSTS OF THE FUND, INCLUDING REPAYMENT OF ANY START-UP
14 FUNDS PROVIDED BY THE STATE, SHALL BE PAID ONLY OUT OF MONEYS ON DEPOSIT
15 THEREIN. HOWEVER, PRIVATE FUNDS OR FEDERAL FUNDING RECEIVED IN ORDER TO
16 IMPLEMENT THE PROGRAM UNTIL THE FUND IS SELF-SUSTAINING SHALL NOT BE
17 REPAYED UNLESS THOSE FUNDS WERE OFFERED CONTINGENT UPON THE PROMISE OF
18 SUCH REPAYMENT. THE BOARD SHALL KEEP ANNUAL ADMINISTRATIVE EXPENSES AS
19 LOW AS POSSIBLE, BUT IN NO EVENT SHALL THEY EXCEED 0.75% OF THE TOTAL
20 TRUST BALANCE.

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

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

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

26 18. FACILITATE COMPLIANCE BY THE PROGRAM WITH ALL APPLICABLE REQUIRE-
27 MENTS FOR THE PROGRAM UNDER THE INTERNAL REVENUE CODE, INCLUDING TAX
28 QUALIFICATION REQUIREMENTS OR ANY OTHER APPLICABLE LAW AND ACCOUNTING
29 REQUIREMENTS.

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

32 20. EXERCISE ANY AND ALL OTHER POWERS REASONABLY NECESSARY FOR THE
33 EFFECTUATION OF THE PURPOSES, OBJECTIVES, AND PROVISIONS OF THIS ARTICLE
34 PERTAINING TO THE PROGRAM.

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

40 S 575. RISK MANAGEMENT. THE BOARD SHALL ANNUALLY PREPARE AND ADOPT A
41 WRITTEN STATEMENT OF INVESTMENT POLICY THAT INCLUDES A RISK MANAGEMENT
42 AND OVERSIGHT PROGRAM. THIS INVESTMENT POLICY SHALL PROHIBIT THE BOARD,
43 PROGRAM, AND FUND FROM BORROWING FOR INVESTMENT PURPOSES. THE RISK
44 MANAGEMENT AND OVERSIGHT PROGRAM SHALL BE DESIGNED TO ENSURE THAT AN
45 EFFECTIVE RISK MANAGEMENT SYSTEM IS IN PLACE TO MONITOR THE RISK LEVELS
46 OF THE PROGRAM AND FUND PORTFOLIO, TO ENSURE THAT THE RISKS TAKEN ARE
47 PRUDENT AND PROPERLY MANAGED, TO PROVIDE AN INTEGRATED PROCESS FOR OVER-
48 ALL RISK MANAGEMENT, AND TO ASSESS INVESTMENT RETURNS AS WELL AS RISK TO
49 DETERMINE IF THE RISKS TAKEN ARE ADEQUATELY COMPENSATED COMPARED TO
50 APPLICABLE PERFORMANCE BENCHMARKS AND STANDARDS. THE BOARD SHALL CONSID-
51 ER THE STATEMENT OF INVESTMENT POLICY AND ANY CHANGES IN THE INVESTMENT
52 POLICY AT A PUBLIC HEARING.

53 S 576. INVESTMENT FIRMS. 1. THE BOARD SHALL ENGAGE, AFTER AN OPEN BID
54 PROCESS, AN INVESTMENT MANAGER OR MANAGERS TO INVEST THE FUND AND ANY
55 OTHER ASSETS OF THE PROGRAM. MONEYS IN THE FUND MAY BE INVESTED OR REIN-
56 VESTED BY THE CHAIR OR MAY BE INVESTED IN WHOLE OR IN PART. IN SELECTING

1 THE INVESTMENT MANAGER OR MANAGERS, THE BOARD SHALL TAKE INTO CONSIDER-
2 ATION AND GIVE WEIGHT TO THE INVESTMENT MANAGER'S FEES AND CHARGES IN
3 ORDER TO REDUCE THE PROGRAM'S ADMINISTRATIVE EXPENSES.

4 2. THE INVESTMENT MANAGER OR MANAGERS SHALL COMPLY WITH ANY AND ALL
5 APPLICABLE FEDERAL AND STATE LAWS, RULES, AND REGULATIONS, AS WELL AS
6 ANY AND ALL RULES, POLICIES, AND GUIDELINES PROMULGATED BY THE BOARD
7 WITH RESPECT TO THE PROGRAM AND THE INVESTMENT OF THE FUND, INCLUDING,
8 BUT NOT LIMITED TO, THE INVESTMENT POLICY.

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

12 S 577. INVESTMENT OPTIONS. 1. THE BOARD SHALL ESTABLISH AS AN INVEST-
13 MENT OPTION A LIFE-CYCLE FUND WITH A TARGET DATE BASED UPON THE AGE OF
14 THE ENROLLEE. THIS SHALL BE THE DEFAULT INVESTMENT OPTION FOR ENROLLEES
15 WHO FAIL TO ELECT AN INVESTMENT OPTION UNLESS AND UNTIL THE BOARD DESIG-
16 NATES BY RULE A NEW INVESTMENT OPTION AS THE DEFAULT.

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

19 (A) A CONSERVATIVE PRINCIPAL PROTECTION FUND;

20 (B) A GROWTH FUND;

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

32 (D) AN ANNUITY FUND.

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

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

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

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

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

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

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

7 (C) HOW TO OPT OUT OF THE PROGRAM;

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

10 (E) THE PROCESS FOR WITHDRAWAL OF RETIREMENT SAVINGS;

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

12 (G) THAT EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD CONTACT FINANCIAL
13 ADVISORS, THAT PARTICIPATING EMPLOYERS ARE NOT IN A POSITION TO PROVIDE
14 FINANCIAL ADVICE, AND THAT PARTICIPATING EMPLOYERS ARE NOT LIABLE FOR
15 DECISIONS EMPLOYEES MAKE PURSUANT TO THIS ARTICLE;

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

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

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

22 5. PARTICIPATING EMPLOYERS SHALL SUPPLY THE EMPLOYEE INFORMATION PACK-
23 ET TO EMPLOYEES UPON LAUNCH OF THE PROGRAM. PARTICIPATING EMPLOYERS
24 SHALL SUPPLY THE EMPLOYEE INFORMATION PACKET TO NEW EMPLOYEES AT THE
25 TIME OF HIRING, AND NEW EMPLOYEES MAY OPT OUT OF PARTICIPATION IN THE
26 PROGRAM OR ELECT TO PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS
27 OTHER THAN THREE PERCENT AT THAT TIME.

28 S 580. PROGRAM IMPLEMENTATION AND ENROLLMENT. EXCEPT AS OTHERWISE
29 PROVIDED IN THIS ARTICLE, THE PROGRAM SHALL BE IMPLEMENTED, AND ENROLL-
30 MENT OF EMPLOYEES SHALL BEGIN, WITHIN TWENTY-FOUR MONTHS AFTER THE
31 EFFECTIVE DATE OF THIS ARTICLE. THE PROVISIONS OF THIS SECTION SHALL BE
32 IN FORCE AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT.

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

36 2. EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PROGRAM EACH OF THEIR
37 EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION IN THE PROGRAM USING
38 THE FORM DESCRIBED IN THIS ARTICLE AND SHALL PROVIDE PAYROLL DEDUCTION
39 RETIREMENT SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND DEPOSIT, ON
40 BEHALF OF SUCH EMPLOYEES, THESE FUNDS INTO THE PROGRAM. SMALL EMPLOYERS
41 MAY, BUT ARE NOT REQUIRED TO, PROVIDE PAYROLL DEDUCTION RETIREMENT
42 SAVINGS ARRANGEMENTS FOR EACH EMPLOYEE WHO ELECTS TO PARTICIPATE IN THE
43 PROGRAM.

44 3. ENROLLEES SHALL HAVE THE ABILITY TO SELECT A CONTRIBUTION LEVEL
45 INTO THE FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR
46 AS A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S TAXA-
47 BLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL REVENUE CODE. ENROL-
48 LEES MAY CHANGE THEIR CONTRIBUTION LEVEL AT ANY TIME, SUBJECT TO RULES
49 PROMULGATED BY THE BOARD. IF AN ENROLLEE FAILS TO SELECT A CONTRIBUTION
50 LEVEL USING THE FORM DESCRIBED IN THIS ARTICLE, THEN HE OR SHE SHALL
51 CONTRIBUTE THREE PERCENT OF HIS OR HER WAGES TO THE PROGRAM, PROVIDED
52 THAT SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL CONTRIB-
53 UTIONS TO IRAS FOR THE YEAR TO EXCEED THE DEDUCTIBLE AMOUNT FOR THE
54 ENROLLEE'S TAXABLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL
55 REVENUE CODE.

1 4. ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE PERMITTED
2 INVESTMENT OPTIONS LISTED IN THIS ARTICLE. ENROLLEES MAY CHANGE THEIR
3 INVESTMENT OPTION AT ANY TIME, SUBJECT TO RULES PROMULGATED BY THE
4 BOARD. IN THE EVENT THAT AN ENROLLEE FAILS TO SELECT AN INVESTMENT
5 OPTION, THAT ENROLLEE SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED
6 BY THE BOARD AS THE DEFAULT UNDER THIS ARTICLE. IF THE BOARD HAS NOT
7 SELECTED A DEFAULT INVESTMENT OPTION UNDER THIS ARTICLE, THEN AN ENROL-
8 LEE WHO FAILS TO SELECT AN INVESTMENT OPTION SHALL BE PLACED IN THE
9 LIFE-CYCLE FUND INVESTMENT OPTION.

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

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

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

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

25 9. THE BOARD SHALL ESTABLISH AND MAINTAIN AN INTERNET WEBSITE DESIGNED
26 TO ASSIST EMPLOYERS IN IDENTIFYING PRIVATE SECTOR PROVIDERS OF RETIRE-
27 MENT ARRANGEMENTS THAT CAN BE SET UP BY THE EMPLOYER RATHER THAN ALLOW-
28 ING EMPLOYEE PARTICIPATION IN THE PROGRAM UNDER THIS ARTICLE; HOWEVER,
29 THE BOARD SHALL ONLY ESTABLISH AND MAINTAIN AN INTERNET WEBSITE UNDER
30 THIS SUBDIVISION IF THERE IS SUFFICIENT INTEREST IN SUCH AN INTERNET
31 WEBSITE BY PRIVATE SECTOR PROVIDERS AND IF THE PRIVATE SECTOR PROVIDERS
32 FURNISH THE FUNDING NECESSARY TO ESTABLISH AND MAINTAIN THE INTERNET
33 WEBSITE. THE BOARD MUST PROVIDE PUBLIC NOTICE OF THE AVAILABILITY OF AND
34 THE PROCESS FOR INCLUSION ON THE INTERNET WEBSITE BEFORE IT BECOMES
35 PUBLICLY AVAILABLE. THIS INTERNET WEBSITE MUST BE AVAILABLE TO THE
36 PUBLIC BEFORE THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, AND THE INTER-
37 NET WEBSITE ADDRESS MUST BE INCLUDED ON ANY INTERNET WEBSITE POSTING OR
38 OTHER MATERIALS REGARDING THE PROGRAM OFFERED TO THE PUBLIC BY THE
39 BOARD.

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

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

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

54 S 582. DUTY AND LIABILITY OF THE STATE. 1. THE STATE SHALL HAVE NO
55 DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY RETIREMENT SAVINGS
56 BENEFITS ACCRUED BY ANY INDIVIDUAL UNDER THE PROGRAM. ANY FINANCIAL

1 LIABILITY FOR THE PAYMENT OF RETIREMENT SAVINGS BENEFITS IN EXCESS OF
2 FUNDS AVAILABLE UNDER THE PROGRAM SHALL BE BORNE SOLELY BY THE ENTITIES
3 WITH WHOM THE BOARD CONTRACTS TO PROVIDE INSURANCE TO PROTECT THE VALUE
4 OF THE PROGRAM.

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

9 S 583. DUTY AND LIABILITY OF PARTICIPATING EMPLOYERS. 1. PARTICIPAT-
10 ING EMPLOYERS SHALL NOT HAVE ANY LIABILITY FOR AN EMPLOYEE'S DECISION TO
11 PARTICIPATE IN, OR OPT OUT OF, THE PROGRAM OR FOR THE INVESTMENT DECI-
12 SIONS OF THE BOARD OR OF ANY ENROLLEE.

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

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

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

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

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

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

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

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

55 2. AFTER DETERMINING THAT AN EMPLOYER IS SUBJECT TO PENALTY UNDER THIS
56 SECTION FOR A CALENDAR YEAR, THE COMPTROLLER SHALL ISSUE A NOTICE OF

1 PROPOSED ASSESSMENT TO SUCH EMPLOYER, STATING THE NUMBER OF EMPLOYEES
2 FOR WHICH THE PENALTY IS PROPOSED UNDER THIS SECTION AND THE NUMBER OF
3 EMPLOYEES FOR WHICH THE PENALTY IS PROPOSED UNDER THIS SECTION FOR SUCH
4 CALENDAR YEAR, AND THE TOTAL AMOUNT OF PENALTIES PROPOSED. UPON THE
5 EXPIRATION OF NINETY DAYS AFTER THE DATE ON WHICH A NOTICE OF PROPOSED
6 ASSESSMENT WAS ISSUED, THE PENALTIES SPECIFIED THEREIN SHALL BE DEEMED
7 ASSESSED, UNLESS THE EMPLOYER HAD FILED A PROTEST WITH THE COMPTROLLER
8 UNDER THIS SECTION. IF, WITHIN NINETY DAYS AFTER THE DATE ON WHICH IT
9 WAS ISSUED, A PROTEST OF A NOTICE OF PROPOSED ASSESSMENT IS FILED UNDER
10 THIS SECTION, THE PENALTIES SPECIFIED THEREIN SHALL BE DEEMED ASSESSED
11 UPON THE DATE WHEN THE DECISION OF THE COMPTROLLER WITH RESPECT TO THE
12 PROTEST BECOMES FINAL.

13 3. A WRITTEN PROTEST AGAINST THE PROPOSED ASSESSMENT SHALL BE FILED
14 WITH THE COMPTROLLER IN SUCH FORM AS THE COMPTROLLER MAY BY RULE
15 PRESCRIBE, SETTING FORTH THE GROUNDS ON WHICH SUCH PROTEST IS BASED. IF
16 SUCH A PROTEST IS FILED WITHIN NINETY DAYS AFTER THE DATE THE NOTICE OF
17 PROPOSED ASSESSMENT IS ISSUED, THE COMPTROLLER SHALL RECONSIDER THE
18 PROPOSED ASSESSMENT AND SHALL GRANT THE EMPLOYER A HEARING. AS SOON AS
19 PRACTICABLE AFTER SUCH RECONSIDERATION AND HEARING, THE COMPTROLLER
20 SHALL ISSUE A NOTICE OF DECISION TO THE EMPLOYER, SETTING FORTH THE
21 COMPTROLLER'S FINDINGS OF FACT AND THE BASIS OF DECISION. THE DECISION
22 OF THE COMPTROLLER SHALL BECOME FINAL:

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

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

29 4. AS SOON AS PRACTICABLE AFTER THE PENALTIES SPECIFIED IN A NOTICE OF
30 PROPOSED ASSESSMENT ARE DEEMED ASSESSED, THE COMPTROLLER SHALL GIVE
31 NOTICE TO THE EMPLOYER LIABLE FOR ANY UNPAID PORTION OF SUCH ASSESSMENT,
32 STATING THE AMOUNT DUE AND DEMANDING PAYMENT. IF AN EMPLOYER NEGLECTS OR
33 REFUSES TO PAY THE ENTIRE LIABILITY SHOWN ON THE NOTICE AND DEMAND WITH-
34 IN TEN DAYS AFTER THE NOTICE AND DEMAND IS ISSUED, THE UNPAID AMOUNT OF
35 THE LIABILITY SHALL BE A LIEN IN FAVOR OF THE STATE UPON ALL PROPERTY
36 AND RIGHTS TO PROPERTY, WHETHER REAL OR PERSONAL, BELONGING TO THE
37 EMPLOYER.

38 5. AN EMPLOYER WHO HAS OVERPAID A PENALTY ASSESSED UNDER THIS SECTION
39 MAY FILE A CLAIM FOR REFUND WITH THE COMPTROLLER. A CLAIM SHALL BE IN
40 WRITING IN SUCH FORM AS THE COMPTROLLER MAY BY RULE PRESCRIBE AND SHALL
41 STATE THE SPECIFIC GROUNDS UPON WHICH IT IS FOUNDED. AS SOON AS PRACTI-
42 CABLE AFTER A CLAIM FOR REFUND IS FILED, THE COMPTROLLER SHALL EXAMINE
43 IT AND EITHER ISSUE A REFUND OR ISSUE A NOTICE OF DENIAL. IF SUCH A
44 PROTEST IS FILED, THE COMPTROLLER SHALL RECONSIDER THE DENIAL AND GRANT
45 THE EMPLOYER A HEARING. AS SOON AS PRACTICABLE AFTER SUCH RECONSIDER-
46 ATION AND HEARING, THE COMPTROLLER SHALL ISSUE A NOTICE OF DECISION TO
47 THE EMPLOYER. THE NOTICE SHALL SET FORTH BRIEFLY THE COMPTROLLER'S FIND-
48 INGS OF FACT AND THE BASIS OF DECISION IN EACH CASE DECIDED IN WHOLE OR
49 IN PART ADVERSELY TO THE EMPLOYER. A DENIAL OF A CLAIM FOR REFUND
50 BECOMES FINAL NINETY DAYS AFTER THE DATE OF ISSUANCE OF THE NOTICE OF
51 THE DENIAL EXCEPT FOR SUCH AMOUNTS DENIED AS TO WHICH THE EMPLOYER HAS
52 FILED A PROTEST WITH THE COMPTROLLER. IF A PROTEST HAS BEEN TIMELY
53 FILED, THE DECISION OF THE COMPTROLLER SHALL BECOME FINAL:

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

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

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

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

12 8. ALL BOOKS AND RECORDS AND OTHER PAPERS AND DOCUMENTS RELEVANT TO
13 THE DETERMINATION OF ANY PENALTY DUE UNDER THIS SECTION SHALL, AT ALL
14 TIMES DURING BUSINESS HOURS OF THE DAY, BE SUBJECT TO INSPECTION BY THE
15 COMPTROLLER OR ITS DULY AUTHORIZED AGENTS AND EMPLOYEES.

16 9. THE COMPTROLLER MAY REQUIRE EMPLOYERS TO REPORT INFORMATION RELE-
17 VANT TO THEIR COMPLIANCE WITH THIS ARTICLE ON TAX RETURNS AND FAILURE TO
18 PROVIDE THE REQUESTED INFORMATION ON A RETURN SHALL CAUSE SUCH RETURN TO
19 BE TREATED AS UNPROCESSABLE.

20 10. FOR PURPOSES OF ANY PROVISION OF STATE LAW ALLOWING THE COMP-
21 TROLLER OR ANY OTHER AGENCY OF THIS STATE TO OFFSET AN AMOUNT OWED TO A
22 TAXPAYER AGAINST A TAX LIABILITY OF THAT TAXPAYER OR ALLOWING THE COMP-
23 TROLLER TO OFFSET AN OVERPAYMENT OF TAX AGAINST ANY LIABILITY OWED TO
24 THE STATE, A PENALTY ASSESSED UNDER THIS SECTION SHALL BE DEEMED TO BE A
25 TAX LIABILITY OF THE EMPLOYER AND ANY REFUND DUE TO AN EMPLOYER SHALL BE
26 DEEMED TO BE AN OVERPAYMENT OF TAX OF THE EMPLOYER.

27 11. EXCEPT AS PROVIDED IN THIS SUBDIVISION, ALL INFORMATION RECEIVED
28 BY THE COMPTROLLER FROM RETURNS FILED BY AN EMPLOYER OR FROM ANY INVE-
29 STIGATION CONDUCTED UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE CONFIDENTIAL, EXCEPT FOR OFFICIAL PURPOSES WITHIN THE OFFICE OF THE COMPTROLLER OR PURSUANT TO OFFICIAL PROCEDURES FOR COLLECTION OF PENALTIES ASSESSED UNDER THIS ARTICLE. NOTHING CONTAINED IN THIS SUBDIVISION SHALL PREVENT THE DIRECTOR FROM PUBLISHING OR MAKING AVAILABLE TO THE PUBLIC REASONABLE STATISTICS CONCERNING THE OPERATION OF THIS ARTICLE WHEREIN THE CONTENTS OF RETURNS ARE GROUPED INTO AGGREGATES IN SUCH A WAY THAT THE SPECIFIC INFORMATION OF ANY EMPLOYER SHALL NOT BE DISCLOSED. NOTHING CONTAINED IN THIS SUBDIVISION SHALL PREVENT THE DIRECTOR FROM DIVULGING INFORMATION TO AN AUTHORIZED REPRESENTATIVE OF THE EMPLOYER OR TO ANY PERSON PURSUANT TO A REQUEST OR AUTHORIZATION MADE BY THE EMPLOYER OR BY AN AUTHORIZED REPRESENTATIVE OF THE EMPLOYER.

41 12. CIVIL PENALTIES AND FEES COLLECTED UNDER THIS ARTICLE SHALL BE
42 DEPOSITED WITH THE COMPTROLLER FOR PURPOSES DEDICATED TO THE ADMINIS-
43 TRATION OF THE PROGRAM.

44 13. THE COMPTROLLER MAY CHARGE THE BOARD A REASONABLE FEE FOR ITS
45 COSTS IN PERFORMING ITS DUTIES UNDER THIS SECTION TO THE EXTENT THAT
46 SUCH COSTS HAVE NOT BEEN RECOVERED FROM PENALTIES IMPOSED UNDER THIS
47 SECTION.

48 14. THIS SECTION SHALL BECOME OPERATIVE NINE MONTHS AFTER THE BOARD
49 NOTIFIES THE DIRECTOR THAT THE PROGRAM HAS BEEN IMPLEMENTED. UPON
50 RECEIPT OF SUCH NOTIFICATION FROM THE BOARD, THE COMPTROLLER SHALL IMMEDIATELY POST ON ITS INTERNET WEBSITE A NOTICE STATING THAT THIS SECTION IS OPERATIVE AND THE DATE THAT IT IS FIRST OPERATIVE. THIS NOTICE SHALL INCLUDE A STATEMENT THAT RATHER THAN ENROLLING EMPLOYEES IN THE PROGRAM
54 UNDER THIS ARTICLE, EMPLOYERS MAY SPONSOR AN ALTERNATIVE ARRANGEMENT.

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

4 S 587. FEDERAL CONSIDERATIONS. THE BOARD SHALL REQUEST IN WRITING AN
5 OPINION OR RULING FROM THE APPROPRIATE ENTITY WITH JURISDICTION OVER THE
6 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT REGARDING THE APPLICA-
7 BILITY OF THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT TO THE
8 PROGRAM. THE BOARD MAY NOT IMPLEMENT THE PROGRAM IF THE IRA ARRANGEMENTS
9 OFFERED UNDER THE PROGRAM FAIL TO QUALIFY FOR THE FAVORABLE FEDERAL
10 INCOME TAX TREATMENT ORDINARILY ACCORDED TO IRAS UNDER THE INTERNAL
11 REVENUE CODE OR IF IT IS DETERMINED THAT THE PROGRAM IS AN EMPLOYEE
12 BENEFIT PLAN AND STATE OR EMPLOYER LIABILITY IS ESTABLISHED UNDER THE
13 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT.

14 S 3. The state finance law is amended by adding two new sections 99-aa
15 and 99-bb to read as follows:

16 S 99-AA. NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND. 1. THERE
17 IS HEREBY ESTABLISHED WITHIN THE CUSTODY OF THE STATE COMPTROLLER, OR
18 HIS OR HER DESIGNEE, IN CONSULTATION WITH THE NEW YORK STATE SECURE
19 CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE KNOWN AS THE NEW YORK
20 STATE SECURE CHOICE SAVINGS PROGRAM FUND.

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

23 3. MONEYS IN THE FUND SHALL CONSIST OF MONEYS RECEIVED FROM ENROLLEES
24 AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC PAYROLL DEDUCTIONS AND
25 CONTRIBUTIONS TO SAVINGS MADE UNDER THE NEW YORK STATE SECURE CHOICE
26 SAVINGS PROGRAM PURSUANT TO ARTICLE FOURTEEN-C OF THE RETIREMENT AND
27 SOCIAL SECURITY LAW.

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

32 5. THE AMOUNTS DEPOSITED IN THE FUND SHALL NOT CONSTITUTE PROPERTY OF
33 THE STATE AND THE FUND SHALL NOT BE CONSTRUED TO BE A DEPARTMENT, INSTI-
34 TUTION, OR AGENCY OF THE STATE. AMOUNTS ON DEPOSIT IN THE FUND SHALL NOT
35 BE COMMINGLED WITH STATE FUNDS AND THE STATE SHALL HAVE NO CLAIM TO OR
36 AGAINST, OR INTEREST IN, SUCH FUNDS.

37 S 99-BB. NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND. 1. THERE
38 IS HEREBY ESTABLISHED WITHIN THE CUSTODY OF THE STATE COMPTROLLER, OR
39 HIS OR HER DESIGNEE, IN CONSULTATION WITH THE NEW YORK STATE SECURE
40 CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE KNOWN AS THE NEW YORK
41 STATE SECURE CHOICE ADMINISTRATIVE FUND.

42 2. THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD SHALL USE
43 MONEYS IN THE ADMINISTRATIVE FUND TO PAY FOR ADMINISTRATIVE EXPENSES IT
44 INCURS IN THE PERFORMANCE OF ITS DUTIES UNDER THE NEW YORK STATE SECURE
45 CHOICE SAVINGS PROGRAM PURSUANT TO ARTICLE FOURTEEN-C OF THE RETIREMENT
46 AND SOCIAL SECURITY LAW.

47 3. THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD SHALL USE
48 MONEYS IN THE ADMINISTRATIVE FUND TO COVER START-UP ADMINISTRATIVE
49 EXPENSES IT INCURS IN THE PERFORMANCE OF ITS DUTIES UNDER ARTICLE FOUR-
50 TEEN-C OF THE RETIREMENT AND SOCIAL SECURITY LAW.

51 4. THE ADMINISTRATIVE FUND MAY RECEIVE ANY GRANTS OR OTHER MONEYS
52 DESIGNATED FOR ADMINISTRATIVE PURPOSES FROM THE STATE, OR ANY UNIT OF
53 FEDERAL OR LOCAL GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR
54 CORPORATION. ANY INTEREST EARNINGS THAT ARE ATTRIBUTABLE TO MONEYS IN
55 THE ADMINISTRATIVE FUND MUST BE DEPOSITED INTO THE ADMINISTRATIVE FUND.

56 S 4. This act shall take effect immediately.