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I N A S S E M B L Y

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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, LAVINE, HEVESI, DINOWITZ, RUSSELL, BRINDISI, BARRON, MOSLEY, STIRPE, FAHY, CASTORINA, RAI, ROSENTHAL -- Multi-Sponsored by -- M. of A. BRENNAN, BUCHWALD, CERETTO, CROUCH, CURRAN, ENGLEBRIGHT, GLICK, HYNDMAN, KEARNS, 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 -- 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.

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

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

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

- 22 1. "BOARD" SHALL MEAN THE NEW YORK SECURE CHOICE SAVINGS BOARD ESTAB-
- 23 LISHED UNDER THIS ARTICLE.
- 24 2. "SUPERINTENDENT" SHALL MEAN THE SUPERINTENDENT OF THE DEPARTMENT OF
- 25 FINANCIAL SERVICES.
- 26 2-A. "COMPTROLLER" SHALL MEAN THE COMPTROLLER OF THE STATE.
- 27 3. "EMPLOYEE" SHALL MEAN ANY INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE
- 28 OR OLDER, WHO IS EMPLOYED BY AN EMPLOYER, AND WHO HAS WAGES THAT ARE
- 29 ALLOCABLE TO NEW YORK STATE DURING A CALENDAR YEAR.
- 30 4. "EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSINESS,
- 31 INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK STATE,
- 32 WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) HAS AT NO TIME DURING THE
- 33 PREVIOUS CALENDAR YEAR EMPLOYED FEWER THAN TWENTY-FIVE EMPLOYEES IN THE
- 34 STATE, (II) HAS BEEN IN BUSINESS AT LEAST TWO YEARS, AND (III) HAS NOT
- 35 OFFERED A QUALIFIED RETIREMENT PLAN, INCLUDING, BUT NOT LIMITED TO, A
- 36 PLAN QUALIFIED UNDER SECTIONS 401(A), 401(K), 403(A), 403(B), 408(K),
- 37 408(P) OR 457(B) OF THE INTERNAL REVENUE CODE OF 1986 IN THE PRECEDING
- 38 TWO YEARS.
- 39 5. "ENROLLEE" SHALL MEAN ANY EMPLOYER WHO IS ENROLLED IN THE PROGRAM.
- 40 6. "FUND" SHALL MEAN THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM
- 41 FUND.
- 42 7. "INTERNAL REVENUE CODE" SHALL MEAN THE INTERNAL REVENUE CODE OF
- 43 1986, OR ANY SUCCESSOR LAW, IN EFFECT FOR THE CALENDAR YEAR.
- 44 8. "IRA" SHALL MEAN A ROTH IRA (INDIVIDUAL RETIREMENT ACCOUNT).
- 45 9. "PARTICIPATING EMPLOYER" SHALL MEAN AN EMPLOYER OR SMALL EMPLOYER
- 46 THAT PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS
- 47 PROVIDED FOR BY THIS ARTICLE FOR ITS EMPLOYEES WHO ARE ENROLLEES IN THE
- 48 PROGRAM.
- 49 10. "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT" SHALL MEAN AN
- 50 ARRANGEMENT BY WHICH A PARTICIPATING EMPLOYER ALLOWS ENROLLEES TO REMIT
- 51 PAYROLL DEDUCTION CONTRIBUTIONS TO THE PROGRAM.
- 52 11. "PROGRAM" SHALL MEAN THE NEW YORK STATE SECURE CHOICE SAVINGS
- 53 PROGRAM.
- 54 12. "SMALL EMPLOYER" SHALL MEAN A PERSON OR ENTITY ENGAGED IN A BUSI-
- 55 NESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN NEW YORK
- 56 STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT (I) EMPLOYED LESS THAN

1 TWENTY-FIVE EMPLOYEES AT ANY ONE TIME IN THE STATE THROUGHOUT THE PREVI-
2 OUS CALENDAR YEAR, OR (II) HAS BEEN IN BUSINESS LESS THAN TWO YEARS, OR
3 BOTH ITEMS (I) AND (II), BUT THAT NOTIFIES THE COMPTROLLER THAT IT IS
4 INTERESTED IN BEING A PARTICIPATING EMPLOYER.

5 13. "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING OF SECTION
6 219(F)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED BY AN ENROLLEE
7 FROM A PARTICIPATING EMPLOYER DURING THE CALENDAR YEAR.

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

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

16 1. THE BOARD SHALL CONSIST OF THE FOLLOWING NINE MEMBERS:

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

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

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

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

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

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

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

29 3. THE INITIAL APPOINTMENTS FOR THE GOVERNOR'S APPOINTEES SHALL BE AS
30 FOLLOWS: ONE PUBLIC REPRESENTATIVE FOR FOUR YEARS; ONE PUBLIC REPRESENTATIVE
31 FOR TWO YEARS; THE REPRESENTATIVE OF PARTICIPATING EMPLOYERS FOR
32 THREE YEARS; AND THE REPRESENTATIVE OF ENROLLEES FOR ONE YEAR. THEREAFT-
33 ER, ALL THE GOVERNOR'S APPOINTEES SHALL BE FOR TERMS OF FOUR YEARS.

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

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

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

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

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

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

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

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

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

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

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

9 (D) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING INVESTMENT
10 FUNDS;

11 (E) ENSURES THE PORTABILITY OF BENEFITS; AND

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

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

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

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

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

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

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

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

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

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

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

1 12. ACCEPT ANY GRANTS, APPROPRIATIONS, OR OTHER MONEYS FROM THE STATE,
2 ANY UNIT OF FEDERAL, STATE, OR LOCAL GOVERNMENT, OR ANY OTHER PERSON,
3 FIRM, PARTNERSHIP, OR CORPORATION SOLELY FOR DEPOSIT INTO THE FUND,
4 WHETHER FOR INVESTMENT OR ADMINISTRATIVE PURPOSES.

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

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

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

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

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

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

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

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

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

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

55 S 576. INVESTMENT FIRMS. 1. THE BOARD SHALL ENGAGE, AFTER AN OPEN BID
56 PROCESS, AN INVESTMENT MANAGER OR MANAGERS TO INVEST THE FUND AND ANY

1 OTHER ASSETS OF THE PROGRAM. MONEYS IN THE FUND MAY BE INVESTED OR REIN-
2 VESTED BY THE CHAIR OR MAY BE INVESTED IN WHOLE OR IN PART. IN SELECTING
3 THE INVESTMENT MANAGER OR MANAGERS, THE BOARD SHALL TAKE INTO CONSIDER-
4 ATION AND GIVE WEIGHT TO THE INVESTMENT MANAGER'S FEES AND CHARGES IN
5 ORDER TO REDUCE THE PROGRAM'S ADMINISTRATIVE EXPENSES.

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

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

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

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

21 (A) A CONSERVATIVE PRINCIPAL PROTECTION FUND;

22 (B) A GROWTH FUND;

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

34 (D) AN ANNUITY FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 6. THE STATE COMPTROLLER SHALL ESTABLISH A WEBSITE REGARDING THE
31 SECURE CHOICE SAVINGS PROGRAM WHICH SHALL BE ACCESSIBLE THROUGH THE
32 STATE COMPTROLLER'S OWN WEBSITE.

33 S 580. PROGRAM IMPLEMENTATION AND ENROLLMENT. EXCEPT AS OTHERWISE
34 PROVIDED IN THIS ARTICLE, THE PROGRAM SHALL BE IMPLEMENTED, AND ENROLL-
35 MENT OF EMPLOYEES SHALL BEGIN, WITHIN TWENTY-FOUR MONTHS AFTER THE
36 EFFECTIVE DATE OF THIS ARTICLE. THE PROVISIONS OF THIS SECTION SHALL BE
37 IN FORCE AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT.

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

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

49 3. ENROLLEES SHALL HAVE THE ABILITY TO SELECT A CONTRIBUTION LEVEL
50 INTO THE FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR
51 AS A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE'S TAXA-
52 BLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL REVENUE CODE. ENROL-
53 LEES MAY CHANGE THEIR CONTRIBUTION LEVEL AT ANY TIME, SUBJECT TO RULES
54 PROMULGATED BY THE BOARD. IF AN ENROLLEE FAILS TO SELECT A CONTRIBUTION
55 LEVEL USING THE FORM DESCRIBED IN THIS ARTICLE, THEN HE OR SHE SHALL
56 CONTRIBUTE THREE PERCENT OF HIS OR HER WAGES TO THE PROGRAM, PROVIDED

1 THAT SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE'S TOTAL CONTRIB-
2 UTIONS TO IRAS FOR THE YEAR TO EXCEED THE DEDUCTIBLE AMOUNT FOR THE
3 ENROLLEE'S TAXABLE YEAR UNDER SECTION 219(B)(1)(A) OF THE INTERNAL
4 REVENUE CODE.

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

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

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

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

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

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

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

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

52 2. BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD FOR MAKING SUCH
53 PAYMENTS, BUT NOT LATER THAN THE DUE DATE FOR THE DEPOSIT OF TAX
54 REQUIRED TO BE DEDUCTED AND WITHHELD RELATING TO COLLECTION OF INCOME
55 TAX AT SOURCE ON WAGES OR FOR THE DEPOSIT OF TAX REQUIRED TO BE PAID

1 UNDER THE UNEMPLOYMENT INSURANCE SYSTEM FOR THE PAYROLL PERIOD TO WHICH
2 SUCH PAYMENTS RELATE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THE DENIAL EXCEPT FOR SUCH AMOUNTS DENIED AS TO WHICH THE EMPLOYER HAS
2 FILED A PROTEST WITH THE COMPTROLLER. IF A PROTEST HAS BEEN TIMELY
3 FILED, THE DECISION OF THE COMPTROLLER SHALL BECOME FINAL:

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

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

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

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

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

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

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

32 11. EXCEPT AS PROVIDED IN THIS SUBDIVISION, ALL INFORMATION RECEIVED
33 BY THE COMPTROLLER FROM RETURNS FILED BY AN EMPLOYER OR FROM ANY INVE-
34 STIGATION CONDUCTED UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE CONFID-
35 DENTIAL, EXCEPT FOR OFFICIAL PURPOSES WITHIN THE OFFICE OF THE COMP-
36 TROLLER OR PURSUANT TO OFFICIAL PROCEDURES FOR COLLECTION OF PENALTIES
37 ASSESSED UNDER THIS ARTICLE. NOTHING CONTAINED IN THIS SUBDIVISION
38 SHALL PREVENT THE DIRECTOR FROM PUBLISHING OR MAKING AVAILABLE TO THE
39 PUBLIC REASONABLE STATISTICS CONCERNING THE OPERATION OF THIS ARTICLE
40 WHEREIN THE CONTENTS OF RETURNS ARE GROUPED INTO AGGREGATES IN SUCH A
41 WAY THAT THE SPECIFIC INFORMATION OF ANY EMPLOYER SHALL NOT BE
42 DISCLOSED. NOTHING CONTAINED IN THIS SUBDIVISION SHALL PREVENT THE
43 DIRECTOR FROM DIVULGING INFORMATION TO AN AUTHORIZED REPRESENTATIVE OF
44 THE EMPLOYER OR TO ANY PERSON PURSUANT TO A REQUEST OR AUTHORIZATION
45 MADE BY THE EMPLOYER OR BY AN AUTHORIZED REPRESENTATIVE OF THE EMPLOYER.

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

49 13. THE COMPTROLLER MAY CHARGE THE BOARD A REASONABLE FEE FOR ITS
50 COSTS IN PERFORMING ITS DUTIES UNDER THIS SECTION TO THE EXTENT THAT
51 SUCH COSTS HAVE NOT BEEN RECOVERED FROM PENALTIES IMPOSED UNDER THIS
52 SECTION.

53 14. THIS SECTION SHALL BECOME OPERATIVE NINE MONTHS AFTER THE BOARD
54 NOTIFIES THE DIRECTOR THAT THE PROGRAM HAS BEEN IMPLEMENTED. UPON
55 RECEIPT OF SUCH NOTIFICATION FROM THE BOARD, THE COMPTROLLER SHALL IMME-
56 DIATELY POST ON ITS INTERNET WEBSITE A NOTICE STATING THAT THIS SECTION

1 IS OPERATIVE AND THE DATE THAT IT IS FIRST OPERATIVE. THIS NOTICE SHALL
2 INCLUDE A STATEMENT THAT RATHER THAN ENROLLING EMPLOYEES IN THE PROGRAM
3 UNDER THIS ARTICLE, EMPLOYERS MAY SPONSOR AN ALTERNATIVE ARRANGEMENT.

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

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

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

19 S 99-AA. NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND. 1. THERE
20 IS HEREBY ESTABLISHED WITHIN THE JOINT CUSTODY OF THE COMMISSIONER OF
21 TAXATION AND FINANCE AND THE STATE COMPTROLLER IN CONSULTATION WITH THE
22 NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE
23 KNOWN AS THE NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM FUND.

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

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

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

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

40 S 99-BB. NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND. 1. THERE
41 IS HEREBY ESTABLISHED WITHIN THE JOINT CUSTODY OF THE COMMISSIONER OF
42 TAXATION AND FINANCE AND THE STATE COMPTROLLER IN CONSULTATION WITH THE
43 NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM BOARD, A NEW FUND TO BE
44 KNOWN AS THE NEW YORK STATE SECURE CHOICE ADMINISTRATIVE FUND.

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

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

54 4. THE ADMINISTRATIVE FUND MAY RECEIVE ANY GRANTS OR OTHER MONEYS
55 DESIGNATED FOR ADMINISTRATIVE PURPOSES FROM THE STATE, OR ANY UNIT OF
56 FEDERAL OR LOCAL GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR

1 CORPORATION. ANY INTEREST EARNINGS THAT ARE ATTRIBUTABLE TO MONEYS IN
2 THE ADMINISTRATIVE FUND MUST BE DEPOSITED INTO THE ADMINISTRATIVE FUND.
3 S 4. This act shall take effect immediately.