

[Second Reprint]

ASSEMBLY, No. 4275

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED MARCH 9, 2015

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SYNOPSIS

“New Jersey Secure Choice Savings Program Act”; establishes retirement savings program for certain workers.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on November 9, 2015, with amendments.

(Sponsorship Updated As Of: 1/8/2016)

1 AN ACT concerning individual retirement savings for certain
2 workers and supplementing Title 43 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Secure Choice Savings Program Act.”

9

10 2. As used in this act:

11 "Board" means the New Jersey Secure Choice Savings Board
12 established pursuant to this act.

13 "Department" means the Department of the Treasury.

14 "Employee" means any individual who is 18 years of age or
15 older, who ¹lives in this State or² is employed by an employer ²in
16 this State², and whose wages are subject to withholding as provided
17 in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

18 "Employer" means a person or entity engaged in a business,
19 industry, profession, trade, or other enterprise in New Jersey,
20 whether for profit or not for profit, that has at no time during the
21 previous calendar year employed fewer than 25 employees in the
22 State, has been in business at least two years, and has not offered a
23 qualified retirement plan, including, but not limited to, a plan
24 qualified under section 401(a), section 401(k), section 403(a),
25 section 403(b), section 408(k), section 408(p), or section 457(b) of
26 the Internal Revenue Code in the preceding two years. “Employer”
27 shall not mean the State, its political subdivisions, any office,
28 department, division, bureau, board, commission or agency of the
29 State or one of its political subdivisions, or any public body in the
30 State.

31 "Enrollee" means any employee who is enrolled in the program.

32 "Fund" means the New Jersey Secure Choice Savings Program
33 Fund established pursuant to this act.

34 "Internal Revenue Code" means the federal Internal Revenue
35 Code of 1986, 26 U.S.C. s.1 et seq., or any successor law, in effect
36 for the calendar year.

37 "IRA" means a standard Individual Retirement Account under
38 section 408, or a Roth Individual Retirement Account under section
39 408A, of the Internal Revenue Code.

40 "Participating employer" means an employer or small employer
41 that provides a payroll deposit retirement savings arrangement as
42 provided under this act for its employees who are enrollees in the
43 program.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted June 18, 2015.

²Assembly AAP committee amendments adopted November 9, 2015.

1 "Payroll deposit retirement savings arrangement" means an
2 arrangement by which a participating employer allows enrollees to
3 remit payroll deduction contributions to the program.

4 "Program" means the New Jersey Secure Choice Savings
5 Program established pursuant to this act.

6 "Small employer" means a person or entity engaged in a
7 business, industry, profession, trade, or other enterprise in New
8 Jersey, whether for profit or not for profit, that employed less than
9 25 employees at any one time in the State throughout the previous
10 calendar year, or has been in business less than two years, or both,
11 but that notifies the board that it is interested in being a
12 participating employer.

13 "Wages" means any compensation within the meaning of section
14 219(f)(1) of the Internal Revenue Code that is received by an
15 enrollee from a participating employer during the calendar year.

16

17 3. A retirement savings program in the form of an automatic
18 enrollment payroll deduction IRA, known as the New Jersey Secure
19 Choice Savings Program, is hereby established and shall be
20 administered by the board for the purpose of promoting greater
21 retirement savings for private sector employees in a convenient, low
22 cost, and portable manner.

23

24 4. a. The New Jersey Secure Choice Savings Program Fund is
25 established as a special fund outside of the General Fund, separate
26 and apart from all public moneys or funds of this State, with the
27 board established pursuant to section 6 of this act as its trustee. The
28 fund shall include the individual retirement accounts of enrollees,
29 which shall be accounted for as individual accounts. Moneys in the
30 fund shall consist of moneys received from enrollees and
31 participating employers pursuant to automatic payroll deductions
32 and contributions to savings made pursuant this act. The fund shall
33 be operated in a manner determined by the board, provided that the
34 fund is operated so that the accounts of enrollees established under
35 the program meet the requirements for IRAs under the Internal
36 Revenue Code.

37 b. The amounts deposited in the fund shall not constitute
38 property of the State and the fund shall not be construed to be a
39 department, institution, or agency of the State. Amounts on deposit
40 in the fund shall not be commingled with State funds and the State
41 shall have no claim to or against, or interest in, such funds.

42

43 5. The New Jersey Secure Choice Administrative Fund is
44 created as a nonappropriated separate and apart trust fund in the
45 General Fund. The board shall use moneys in the administrative
46 fund to pay for administrative expenses it incurs in the performance
47 of its duties under this act. The board shall use moneys in the
48 administrative fund to cover startup administrative expenses it

1 incurs in the performance of its duties under this act. The
2 administrative fund may receive any grants or other moneys
3 designated for administrative purposes from the State, or any unit of
4 federal or local government, or any other person, firm, partnership,
5 or corporation. Any interest earnings that are attributable to moneys
6 in the administrative fund shall be deposited into the administrative
7 fund.

8

9 6. There is established the New Jersey Secure Choice Savings
10 Board.

11 a. The board shall consist of the following members:

12 (1) the State Treasurer, or the State Treasurer's designee, who
13 shall serve as chair;

14 (2) the State Comptroller, or the State Comptroller's designee;

15 (3) the Director of the Office of Management and Budget, or the
16 director's designee;

17 (4) two representatives of the general public with expertise in
18 retirement savings plan administration or investment, or both, of
19 which one representative shall be appointed by the Speaker of
20 General Assembly and one representative appointed by the Senate
21 President;

22 (5) a representative of participating employers, appointed by the
23 Governor; and

24 (6) a representative of enrollees, appointed by the Governor.

25 b. Members of the board shall serve without compensation.

26 c. The initial terms of the appointees shall be as follows: the
27 public representative appointed by the Senate President, for four
28 years; the public representative appointed by the Speaker of the
29 General Assembly, for two years; the representative of participating
30 employers, for three years; and the representative of enrollees for
31 one year. Thereafter, all of the appointees shall be for terms of four
32 years.

33 d. A vacancy in the term of an appointed board member shall
34 be filled for the balance of the unexpired term in the same manner
35 as the original appointment.

36 e. Each appointment by the Governor shall be subject to the
37 advice and consent of the Senate. In case of a vacancy during a
38 recess of the Senate, the Governor shall make a temporary
39 appointment until the next meeting of the Senate, at which time the
40 Governor shall appoint a person to fill the office.

41 f. Each board member, prior to assuming office, shall take an
42 oath that the member will diligently and honestly administer the
43 affairs of the board and that the member will not knowingly violate
44 or willingly permit to be violated any of the provisions of law
45 applicable to the program. The oath shall be certified by the officer
46 before whom it is taken and immediately filed with the Secretary of
47 State.

1 7. The board, the individual members of the board, the trustee
2 appointed under subsection b. of section 8 of this act, any other
3 agents appointed or engaged by the board, and all persons serving
4 as program staff shall discharge their duties with respect to the
5 program solely in the interest of the program's enrollees and
6 beneficiaries as follows:

7 a. By investing with the care, skill, prudence, and diligence
8 under the prevailing circumstances that a prudent person acting in a
9 like capacity and familiar with those matters would use in the
10 conduct of an enterprise of a similar character and with similar
11 aims; and

12 b. By using any contributions paid by employees and
13 employers into the fund exclusively for the purpose of paying
14 benefits to the enrollees of the program, for the cost of
15 administration of the program, and for investments made for the
16 benefit of the program.

17

18 8. In addition to the other duties and responsibilities provided
19 in this act, the board shall:

20 a. Design, establish, and operate the program in a manner that:

21 (1) accords with best practices for retirement savings vehicles;

22 (2) maximizes participation, savings, and sound investment
23 practices;

24 (3) maximizes simplicity, including ease of administration for
25 participating employers and enrollees;

26 (4) provides an efficient product to enrollees by pooling
27 investment funds;

28 (5) ensures the portability of benefits; and

29 (6) provides for the deaccumulation of enrollee assets in a
30 manner that maximizes financial security in retirement;

31 b. Appoint a trustee to the fund in compliance with section 408
32 of the Internal Revenue Code;

33 c. Explore and establish investment options, subject to section
34 11 of this act, that offer employees returns on contributions and the
35 conversion of individual retirement savings account balances to
36 secure retirement income without incurring debt or liabilities to the
37 State;

38 d. Establish the process by which interest, investment earnings,
39 and investment losses are allocated to individual program accounts
40 on a pro rata basis and are computed at the interest rate on the
41 balance of an individual's account;

42 e. Make and enter into contracts necessary for the
43 administration of the program and the fund, including, but not
44 limited to, retaining and contracting with investment managers,
45 private financial institutions, other financial and service providers,
46 consultants, actuaries, counsel, auditors, third-party administrators,
47 and other professionals as necessary;

- 1 f. Conduct a review of the performance of any investment
2 vendors not less than once every ²~~four~~ two² years, including, but
3 not limited to, a review of returns, fees, and customer service, and
4 post a copy of reviews conducted under this subsection to an
5 Internet website established and maintained by the board;
- 6 g. Determine the number and duties of staff members needed to
7 administer the program and employ a staff, including, as needed,
8 appointing a program administrator, and entering into contracts with
9 the State Treasurer to make employees of the department available
10 to administer the program;
- 11 h. Ensure that moneys in the fund ²~~to~~² be held and invested
12 as pooled investments described in section 11 of this act, with a
13 view to achieving cost savings through efficiencies and economies
14 of scale;
- 15 i. Evaluate and establish the process by which an enrollee is
16 able to contribute a portion of the enrollee's wages to the program
17 for automatic deposit of those contributions and the process by
18 which the participating employer provides a payroll deposit
19 retirement savings arrangement to forward those contributions and
20 related information to the program, including, but not limited to,
21 contracting with financial service companies and third-party
22 administrators with the capability to receive and process employee
23 information and contributions for payroll deposit retirement savings
24 arrangements or similar arrangements;
- 25 j. Design and establish the process for enrollment by an
26 employee pursuant to section 14 of this act, including the process
27 by which an employee can opt not to participate in the program,
28 select a contribution level, select an investment option, and
29 terminate participation in the program;
- 30 k. Evaluate and establish the process by which an individual
31 may voluntarily enroll in and make contributions to the program;
- 32 l. Accept any grants, appropriations, or other moneys from the
33 State, any unit of federal, State, or local government, or any other
34 person, firm, partnership, or corporation solely for deposit into the
35 fund, whether for investment or administrative purposes;
- 36 m. Evaluate the need for, and procure as needed, insurance
37 against any and all loss in connection with the property, assets, or
38 activities of the program, and indemnify as needed each member of
39 the board from personal loss or liability resulting from a member's
40 action or inaction as a member of the board;
- 41 n. Make provisions for the payment of administrative costs and
42 expenses for the creation, management, and operation of the
43 program, including the costs associated with subsections e., g., i.,
44 and m. of this section, subsection b. of section 11, subsection a. of
45 section 18, and subsection m. of section 19 of this act, ²~~and~~² keep
46 annual administrative fees as low as possible, but in no event ²~~shall~~
47 annual administrative fees² exceed ²~~0.75 percent~~ 0.6 percent² of

1 the fund's total balance. ²“Administrative fees” shall include any
2 investment fees incurred pursuant to this section.² Subject to
3 appropriation, the State may pay administrative costs associated
4 with the creation and management of the program until sufficient
5 assets are available in the fund for that purpose. Thereafter, all
6 administrative costs of the fund, including repayment of any funds
7 provided by the State, shall be paid only out of moneys on deposit
8 therein, except that, private funds or federal funding received under
9 subsection l. of this section in order to implement the program shall
10 not be repaid unless those funds were offered contingent upon the
11 promise of repayment;

12 o. Allocate administrative fees to individual retirement
13 accounts in the program on a pro rata basis;

14 p. Set minimum and maximum contribution levels in
15 accordance with limits established for IRAs by the Internal Revenue
16 Code;

17 q. Facilitate education and outreach to employers and
18 employees;

19 r. Facilitate compliance by the program with all applicable
20 requirements for the program under the Internal Revenue Code,
21 including tax qualification requirements or any other applicable law
22 and accounting requirements;

23 s. Carry out the duties and obligations of the program in an
24 effective, efficient, and low-cost manner;

25 t. Exercise any and all other powers reasonably necessary for
26 the effectuation of the purposes, objectives, and provisions of this
27 act pertaining to the program; and

28 u. Deposit into the New Jersey Secure Choice Administrative
29 Fund all grants, gifts, donations, fees, and earnings from
30 investments from the New Jersey Secure Choice Savings Program
31 Fund that are used to recover administrative costs. All expenses of
32 the board shall be paid from the New Jersey Secure Choice
33 Administrative Fund.

34
35 9. The board shall annually prepare and adopt a written
36 statement of investment policy that includes a risk management and
37 oversight program. This investment policy shall prohibit the board,
38 program, and fund from borrowing for investment purposes. The
39 risk management and oversight program shall be designed to ensure
40 that an effective risk management system is in place to monitor the
41 risk levels of the program and fund portfolio, to ensure that the risks
42 taken are prudent and properly managed, to provide an integrated
43 process for overall risk management, and to assess investment
44 returns as well as risk to determine if the risks taken are adequately
45 compensated compared to applicable performance benchmarks and
46 standards. The board shall consider the statement of investment
47 policy and any changes in the investment policy at a public hearing.

1 10. a. Moneys in the fund shall be invested, or reinvested, as the
2 case may be, by the department. The department shall comply with
3 any and all applicable federal and State laws, rules, and regulations,
4 as well as any and all rules or regulations promulgated by the board
5 with respect to the program and the investment of the fund,
6 including, but not limited to, the investment policy.

7 b. The department shall provide reports as the board deems
8 necessary for the board to oversee the department's performance
9 and the performance of the fund.

10
11 11. a. The board shall establish as an investment option a life-
12 cycle fund with a target date based upon the age of the enrollee.
13 This fund shall be the default investment option for enrollees who
14 fail to elect an investment option unless and until the board
15 designates by rule or regulation a new investment option as the
16 default as described in subsection c. of this section.

17 b. The board may also establish any or all of the following
18 additional investment options:

19 (1) a conservative principal protection fund;

20 (2) a growth fund;

21 (3) a secure return fund whose primary objective is the
22 preservation of the safety of principal and the provision of a stable
23 and low-risk rate of return. If the board elects to establish a secure
24 return fund, the board may procure any insurance, annuity, or other
25 product to insure the value of enrollees' accounts and guarantee a
26 rate of return. The cost of this funding mechanism shall be paid out
27 of the fund. Under no circumstances shall the board, program,
28 fund, the State, or any participating employer assume any liability
29 for investment or actuarial risk. The board shall determine whether
30 to establish such investment options based upon an analysis of their
31 cost, risk profile, benefit level, feasibility, and ease of
32 implementation; or

33 (4) an annuity fund.

34 c. If the board elects to establish a secure return fund, the
35 board shall then determine whether that option shall replace the
36 target date or life-cycle fund as the default investment option for
37 enrollees who do not elect an investment option. In making this
38 determination, the board shall consider the cost, risk profile, benefit
39 level, and ease of enrollment in the secure return fund. The board
40 may at any time thereafter replace the default investment option
41 and, based upon an analysis of these criteria, establish either the
42 secure return fund or the life-cycle fund as the default for enrollees
43 who do not elect an investment option.

44 ²d. Notwithstanding any other provision of this section, the
45 board shall not offer more than five investment options in any given
46 calendar year.²

1 12. Interest, investment earnings, and investment losses shall be
2 allocated to individual program accounts as established by the board
3 pursuant to subsection d. of section 8 of this act. An individual's
4 retirement savings benefit under the program shall be an amount
5 equal to the balance in the individual's program account on the date
6 the retirement savings benefit becomes payable. The State shall
7 have no liability for the payment of any benefit to any participant in
8 the program.

9
10 13. a. Prior to the opening of the program for enrollment, the
11 board shall design and disseminate to all employers an employer
12 information packet and an employee information packet, which
13 shall include background information on the program, appropriate
14 disclosures for employees, and, if necessary, information regarding
15 the vendor Internet website described in subsection ²[i.] _{j.}² of
16 section 14 of this act.

17 b. For the first six months following the opening of the
18 program, the board shall provide a process by which employers may
19 register for participation in the program.

20 c. The employee information packet designed by the board
21 shall include a disclosure form. The disclosure form shall explain,
22 but not be limited to, all of the following:

23 (1) the benefits and risks associated with making contributions
24 to the program;

25 (2) the mechanics of how to make contributions to the program;

26 (3) how to opt out of the program;

27 (4) how to participate in the program with a level of employee
28 contributions other than three percent;

29 (5) the process for withdrawal of retirement savings;

30 (6) how to obtain additional information about the program;

31 (7) that employees seeking financial advice should contact
32 financial advisors, that participating employers are not in a position
33 to provide financial advice, and that participating employers are not
34 liable for decisions employees make pursuant to this act;

35 (8) that the program is not an employer-sponsored retirement
36 plan; and

37 (9) that the program fund is not guaranteed by the State.

38 d. The employee information packet shall also include a form
39 for an employee to note his or her decision to opt out of
40 participation in the program or elect to participate with a level of
41 employee contributions other than three percent.

42 e. Participating employers shall supply the employee
43 information packet to employees upon implementation of the
44 program. Participating employers shall supply the employee
45 information packet to new employees at the time of hiring, and new
46 employees may opt out of participation in the program or elect to
47 participate with a level of employee contributions other than three
48 percent at that time.

1 14. Except as otherwise provided in section 21 of this act, the
2 program shall be implemented, and enrollment of employees shall
3 begin, within 24 months after the effective date of this act. The
4 following provisions of this section shall be in force after the board
5 opens the program for enrollment:

6 a. Each employer shall establish a payroll deposit retirement
7 savings arrangement to allow each employee to participate in the
8 program not more than nine months after the board opens the
9 program for enrollment.

10 b. Employers shall automatically enroll in the program each of
11 their employees who has not opted out of participation in the
12 program using the form described in subsection d. of section 13 of
13 this act and shall provide payroll ²~~deduction~~ deposit² retirement
14 savings arrangements for their employees and, on behalf of the
15 employees, deposit these funds into the program. Small employers
16 may, but are not required to, provide payroll ²~~deduction~~ deposit²
17 retirement savings arrangements for each employee who elects to
18 participate in the program.

19 c. Enrollees shall have the ability to select a contribution level
20 into the fund. This level may be expressed as a percentage of
21 wages or as a dollar amount up to the deductible amount for the
22 enrollee's taxable year under section 219(b)(1)(A) of the Internal
23 Revenue Code. Enrollees may change their contribution level no
24 more than once every calendar quarter, subject to rules and
25 regulations promulgated by the board. If an enrollee fails to select a
26 contribution level using the form described in subsection ²~~c.~~, d.²
27 of section 13 of this act, then the enrollee shall contribute three
28 percent of the enrollee's wages to the program, so long as the
29 contributions do not cause the enrollee's total contributions to IRAs
30 for the year to exceed the deductible amount for the enrollee's
31 taxable year under section 219(b)(1)(A) of the Internal Revenue
32 Code.

33 d. Enrollees may select an investment option from the
34 permitted investment options listed in section 11 of this act.
35 Enrollees may change their investment option no more than once
36 every calendar quarter, subject to the rules and regulations
37 promulgated by the board. In the event that an enrollee fails to
38 select an investment option, that enrollee shall be placed in the
39 investment option selected by the board as the default under
40 subsection c. of section 11 of this act. If the board has not selected
41 a default investment option under subsection c. of section 11 of this
42 act, then an enrollee who fails to select an investment option shall
43 be placed in the life-cycle fund investment option.

44 e. Following initial implementation of the program pursuant to
45 this section, at least once every year, participating employers shall
46 designate an open enrollment period during which employees who
47 previously opted out of the program may enroll in the program.

1 f. ¹(1) For any employee hired by an employer more than six
2 months after the board opens the program for enrollment, the
3 employer shall enroll the employee in the program no later than
4 three months following the date of hire of the employee, unless the
5 employee opts out of enrollment in the program prior to being
6 enrolled.

7 (2) Any newly hired employee who has previously been enrolled
8 in the program shall have the option of making direct contributions
9 into that employee's existing account, provided that paragraph (1)
10 of this subsection also applies to the employer of a newly hired
11 employee who has been previously enrolled in the program.

12 g.¹ An employee who opts out of the program who subsequently
13 wants to participate through the participating employer's payroll
14 deposit retirement savings arrangement may only enroll during the
15 participating employer's designated open enrollment period or if
16 permitted by the participating employer at an earlier time.

17 ¹[g.] h.¹ Employers shall retain the option at all times to set up
18 any type of employer-sponsored retirement plan, such as a defined
19 benefit plan or a 401(k), Simplified Employee Pension (SEP) plan,
20 or Savings Incentive Match Plan for Employees (SIMPLE) plan, or
21 to offer an automatic enrollment payroll deduction IRA, instead of
22 having a payroll deposit retirement savings arrangement to allow
23 employee participation in the program.

24 ¹[h.] i.¹ An employee may terminate his or her participation
25 in the program at any time in a manner prescribed by the board.

26 ¹[i.] j.¹ The board may establish and maintain an Internet
27 website designed to assist employers in identifying private sector
28 providers of retirement arrangements that can be set up by the
29 employer rather than allowing employee participation in the
30 program under this act. The board ¹[must] shall¹ provide public
31 notice of the availability of and the process for inclusion on the
32 Internet website before it becomes publicly available.

33
34 15. Employee contributions deducted by the participating
35 employer through payroll deduction shall be paid by the
36 participating employer to the fund using one or more payroll
37 deposit retirement savings arrangements established by the board
38 under subsection i. of section 8 of this act, either:

39 a. On or before the last day of the month following the month
40 in which the compensation otherwise would have been payable to
41 the employee; or

42 b. Before a later deadline prescribed by the board for making
43 the payments, but not later than the due date for the federal income
44 tax return deposit of tax required to be deducted and withheld
45 relating to collection of State income tax at source on wages for the
46 payroll period to which the payments relate.

1 16. a. The State shall have no duty or liability to any party for
2 the payment of any retirement savings benefits accrued by any
3 individual under the program. Any financial liability for the
4 payment of retirement savings benefits in excess of funds available
5 under the program shall be borne solely by the entities with whom
6 the board contracts to provide insurance to protect the value of the
7 program.

8 b. No State entity, board, commission, or agency, or any
9 officer, employee, or member thereof is liable for any loss or
10 deficiency resulting from particular investments selected under this
11 act, except for any liability that arises out of a breach of fiduciary
12 duty under section 7 of this act.

13

14 17. a. Participating employers shall not have any liability for an
15 employee's decision to participate in, or opt out of, the program or
16 for the investment decisions of the board or of any enrollee.

17 b. A participating employer shall not be a fiduciary, or
18 considered to be a fiduciary, over the program. A participating
19 employer shall not bear responsibility for the administration,
20 investment, or investment performance of the program. A
21 participating employer shall not be liable with regard to investment
22 returns, program design, and benefits paid to program participants.

23

24 18. a. The board shall annually submit:

25 (1) an audited financial report, prepared in accordance with
26 generally accepted accounting principles, on the operations of the
27 program for each calendar year, to be submitted no later than July 1
28 of the following year to the Governor, and to the Legislature
29 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1); and

30 (2) a report prepared by the board, including, but not limited to,
31 a summary of the benefits provided by the program, the number of
32 enrollees in the program, the percentage and amounts of investment
33 options and rates of return, fees paid to any vendors or contractors
34 for purposes of implementing or operating the program, and other
35 information that is relevant to make a full, fair, and effective
36 disclosure of the operations of the program and the fund.

37 The annual audit shall be made by an independent certified
38 public accountant and shall include, but is not limited to, direct and
39 indirect costs attributable to the use of outside consultants,
40 independent contractors, and any other persons who are not State
41 employees for the administration of the program.

42 b. In addition to any other statements or reports required by
43 law, the board shall provide periodic reports at least annually to
44 participating employers, reporting the names of each enrollee
45 employed by the participating employer and the amounts of
46 contributions made by the participating employer on behalf of each
47 employee during the reporting period, as well as to enrollees,
48 reporting contributions and investment income allocated to,

1 withdrawals from, and balances in their program accounts for the
2 reporting period. The reports may include any other information
3 regarding the program as the board determines is appropriate.
4

5 19. a. An employer who fails without reasonable cause to enroll
6 ~~an~~ any employee who has not opted out of participation in the
7 program within the time prescribed under section 14 of this act shall
8 be subject to ~~a penalty equal to~~:

9 (1) ~~\$250 for each employee for each calendar year or portion~~
10 ~~of a calendar year during which the employee neither was enrolled~~
11 ~~in the program nor had elected out of participation in the program;~~
12 ~~or~~ for the first calendar year during which at any point a violation
13 occurs, a written warning by the department;¹

14 (2) ~~for each calendar year beginning after the date a penalty~~
15 ~~has been assessed with respect to an employee, \$500 for any portion~~
16 ~~of that calendar year during which such employee continues to be~~
17 ~~unenrolled without electing out of participation in the program~~ for
18 the second calendar year during which at any point a violation
19 occurs, a fine of \$100;

20 (3) for the third and fourth calendar year during which at any
21 point a violation occurs, a fine of \$250 for each employee who was
22 neither enrolled in nor opted out of participation in the program;
23 and

24 (4) for the fifth and any subsequent calendar year during which
25 at any point a violation occurs, a fine of \$500 for each employee
26 who was neither enrolled in nor opted out of participation in the
27 program¹.

28 b. An employer who collects employee contributions but fails
29 to remit any portion of the contributions to the fund shall be subject
30 to a penalty of \$2,500 for a first offense, and \$5,000 for the second
31 and each subsequent offense.

32 c. After a determination that an employer is subject to penalty
33 pursuant to this section, the department shall issue a notice of
34 proposed penalty to the employer. For purposes of subsection a. of
35 this section, the notice issued by the department to the employer
36 shall state the number of employees for which the penalty is
37 proposed under paragraph ~~(1)~~ (3) or (4)¹ of subsection a. of this
38 section ~~, or the number of employees for which the penalty is~~
39 ~~proposed under paragraph (2) of subsection a. of this section, or~~
40 ~~both,~~¹ and the total amount of penalties proposed. For purposes of
41 subsection b. of this section, the department shall issue a notice of
42 proposed penalty to the employer stating the total amount of
43 penalties proposed under subsection b. of this section. Upon the
44 expiration of 90 days after the date on which a notice of proposed
45 penalty was issued, the penalties specified therein shall be deemed
46 assessed, unless the employer had filed a protest with the
47 department under subsection d. of this section. If, within 90 days

1 after the date on which the notice of proposed penalty was issued, a
2 protest is filed under subsection d. of this section, the penalties
3 specified in the notice shall be deemed assessed when the decision
4 of the department with respect to the protest is final.

5 d. A written protest against the proposed penalty shall be filed
6 with the department in a form prescribed by the department, setting
7 forth the grounds on which the protest is based. If a protest is filed
8 within 90 days after the date the notice of proposed penalty is
9 issued, the department shall reconsider the proposed penalty and
10 shall grant the employer a hearing. As soon as practicable after a
11 reconsideration and hearing of the protest filed by the employer, the
12 department shall issue a notice of decision to the employer, setting
13 forth the department's findings of fact and the basis of decision.
14 The decision of the department shall become final.

15 e. As soon as practicable after the penalties specified in a
16 notice of proposed penalty are deemed assessed, the department
17 shall give notice to the employer liable for any unpaid portion of the
18 penalty, stating the amount due and demanding payment. The
19 department shall provide a payment plan to employers for purposes
20 of complying with the demand of payment for the penalty.

21 f. An employer who has overpaid a penalty assessed under this
22 section may file a claim for refund with the department. A claim
23 shall be in writing in a form prescribed by the department and shall
24 state the specific grounds upon which it is founded. As soon as
25 practicable after a claim for refund is filed, the department shall
26 examine it and either issue a refund or issue a notice of denial. If a
27 protest is filed, the department shall reconsider the denial and grant
28 the employer a hearing. As soon as practicable after the
29 reconsideration and hearing, the department shall issue a notice of
30 decision to the employer. The notice shall set forth briefly the
31 department's findings of fact and the basis of decision in each case
32 decided in whole or in part adversely to the employer. A denial of a
33 claim for refund shall be final 90 days after the date of issuance of
34 the notice of the denial, except for those amounts denied as to
35 which the employer has filed a protest with the department. If a
36 protest has been timely filed, the decision of the department shall
37 become final.

38 g. No notice of proposed assessment shall be issued with
39 respect to a calendar year after June 30 of the fourth subsequent
40 calendar year. No claim for refund may be filed more than one year
41 after the date of payment of the amount to be refunded.

42 h. Whenever a notice is required by this section, it shall be
43 issued by first class mail addressed to the person concerned at the
44 person's last known address.

45 i. All books and records and other papers and documents
46 relevant to the determination of any penalty due under this section
47 shall, at all times during business hours of the day, be subject to

1 inspection by the department or the department's authorized
2 representatives.

3 j. The department shall require employers to report
4 information relevant to their compliance with this act on their State
5 income tax return ~~'[and failure].~~ Failure¹ to provide the
6 ~~'[requested] compliance'~~ information¹ requested¹ shall not¹ cause
7 the income tax¹ return to be treated as unprocessable for purposes
8 of the applicable tax law¹.

9 k. For purposes of any provision of State law allowing the
10 department or any other agency of this State to offset an amount
11 owed to a taxpayer against a tax liability of that taxpayer or
12 allowing the department to offset an overpayment of tax against any
13 liability owed to the State, a penalty assessed under this section
14 shall be deemed to be a tax liability of the employer and any refund
15 due to an employer shall be deemed to be an overpayment of tax of
16 the employer.

17 l. Except as provided in this subsection, all information
18 received by the department from returns filed by an employer or
19 from any investigation conducted under the provisions of this act
20 shall be confidential, except for official purposes within the
21 department or pursuant to official procedures for collection of
22 penalties assessed under this act. No provision of this subsection
23 shall be construed as prohibiting the department from publishing or
24 making available to the public reasonable statistics concerning the
25 operation of this act wherein the contents of returns are grouped
26 into aggregates in such a way that the specific information of any
27 individual employer shall not be disclosed. No provision of this
28 subsection shall be construed as prohibiting the department from
29 divulging information to an authorized representative of the
30 employer or to any person pursuant to a request or authorization
31 made by the employer or by an authorized representative of the
32 employer.

33 m. The department may charge the board a reasonable fee for its
34 costs in performing its duties under this section to the extent that
35 those costs have not been recovered from penalties imposed under
36 this section.

37 n. This section shall become operative nine months after the
38 board notifies the department that the program has been
39 implemented. Upon receipt of the notification from the board, the
40 department shall immediately post on its Internet website a notice
41 stating that this section is operative and the date that it is first
42 operative. This notice shall include a statement that, rather than
43 enrolling employees in the program under this act, employers may
44 sponsor an alternative arrangement, including, but not limited to, a
45 defined benefit plan, 401(k) plan, a Simplified Employee Pension
46 (SEP) plan, a Savings Incentive Match Plan for Employees
47 (SIMPLE) plan, or an automatic payroll deduction IRA offered

1 through a private provider. The board shall provide a link to the
2 vendor Internet website described in subsection ¹[i.] ¹j. of section
3 14 of this act.

4

5 20. The board, in consultation with the department, shall adopt,
6 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
7 (C.52:14B-1 et seq.), any rules and regulations as may be necessary
8 for the implementation of this act.

9

10 21. If the board does not obtain adequate funds to implement the
11 program within the time frame set forth under section 14 of this act,
12 the board may delay the implementation of the program.

13

14 22. The board shall request in writing an opinion or ruling from
15 the appropriate entity with jurisdiction over the federal "Employee
16 Retirement Income Security Act of 1974," 29 U.S.C. s.1001 et seq.
17 regarding the applicability of that act to the program. The board
18 shall not implement the program if the IRA arrangements offered
19 under the program fail to qualify for the favorable federal income
20 tax treatment ordinarily accorded to IRAs under the Internal
21 Revenue Code or if it is determined that the program is an employee
22 benefit plan and State or employer liability is established under the
23 "Employee Retirement Income Security Act of 1974," 29 U.S.C.
24 s.1001 et seq.

25

26 23. This act shall take effect immediately.