

# ASSEMBLY, No. 4134

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 11, 2018

**Sponsored by:**

**Assemblyman ROY FREIMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblymen S.Kean, Holley, Benson, Giblin, Assemblywoman Quijano,**

**Assemblymen Conaway, Johnson, Calabrese and Assemblywoman Carter**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/30/2018)**

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 lives in this State or is employed by an employer in this  
16 State, and whose wages are subject to withholding as provided in  
17 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.

44 "Payroll deposit retirement savings arrangement" means an  
45 arrangement by which a participating employer allows enrollees to  
46 remit payroll deduction contributions to the program.

47 "Program" means the New Jersey Secure Choice Savings  
48 Program established pursuant to this act.

1 "Small employer" means a person or entity engaged in a  
2 business, industry, profession, trade, or other enterprise in New  
3 Jersey, whether for profit or not for profit, that employed less than  
4 25 employees at any one time in the State throughout the previous  
5 calendar year, or has been in business less than two years, or both,  
6 but that notifies the board that it is interested in being a  
7 participating employer.

8 "Wages" means any compensation within the meaning of section  
9 219(f)(1) of the Internal Revenue Code that is received by an  
10 enrollee from a participating employer during the calendar year.

11

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

18

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

32 b. The amounts deposited in the fund shall not constitute  
33 property of the State and the fund shall not be construed to be a  
34 department, institution, or agency of the State. Amounts on deposit  
35 in the fund shall not be commingled with State funds and the State  
36 shall have no claim to or against, or interest in, such funds.

37

38 5. The New Jersey Secure Choice Administrative Fund is  
39 created as a nonappropriated separate and apart trust fund in the  
40 General Fund. The board shall use moneys in the administrative  
41 fund to pay for administrative expenses it incurs in the performance  
42 of its duties under this act. The board shall use moneys in the  
43 administrative fund to cover startup administrative expenses it  
44 incurs in the performance of its duties under this act. The  
45 administrative fund may receive any grants or other moneys  
46 designated for administrative purposes from the State, or any unit of  
47 federal or local government, or any other person, firm, partnership,  
48 or corporation. Any interest earnings that are attributable to moneys

1 in the administrative fund shall be deposited into the administrative  
2 fund.

3

4 6. There is established the New Jersey Secure Choice Savings  
5 Board.

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

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

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

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

12 (4) two representatives of the general public with expertise in  
13 retirement savings plan administration or investment, or both, of  
14 which one representative shall be appointed by the Speaker of  
15 General Assembly and one representative appointed by the Senate  
16 President;

17 (5) a representative of participating employers, appointed by the  
18 Governor; and

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

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

21 c. The initial terms of the appointees shall be as follows: the  
22 public representative appointed by the Senate President, for four  
23 years; the public representative appointed by the Speaker of the  
24 General Assembly, for two years; the representative of participating  
25 employers, for three years; and the representative of enrollees for  
26 one year. Thereafter, all of the appointees shall be for terms of four  
27 years.

28 d. A vacancy in the term of an appointed board member shall  
29 be filled for the balance of the unexpired term in the same manner  
30 as the original appointment.

31 e. Each appointment by the Governor shall be subject to the  
32 advice and consent of the Senate. In case of a vacancy during a  
33 recess of the Senate, the Governor shall make a temporary  
34 appointment until the next meeting of the Senate, at which time the  
35 Governor shall appoint a person to fill the office.

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

43

44 7. The board, the individual members of the board, the trustee  
45 appointed under subsection b. of section 8 of this act, any other  
46 agents appointed or engaged by the board, and all persons serving  
47 as program staff shall discharge their duties with respect to the

1 program solely in the interest of the program's enrollees and  
2 beneficiaries as follows:

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

8 b. By using any contributions paid by employees and  
9 employers into the fund exclusively for the purpose of paying  
10 benefits to the enrollees of the program, for the cost of  
11 administration of the program, and for investments made for the  
12 benefit of the program.

13

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

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

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

18 (2) maximizes participation, savings, and sound investment  
19 practices;

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

22 (4) provides an efficient product to enrollees by pooling  
23 investment funds;

24 (5) ensures the portability of benefits; and

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

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

29 c. Explore and establish investment options, subject to section  
30 11 of this act, that offer employees returns on contributions and the  
31 conversion of individual retirement savings account balances to  
32 secure retirement income without incurring debt or liabilities to the  
33 State;

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

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

44 f. Conduct a review of the performance of any investment  
45 vendors not less than once every two years, including, but not  
46 limited to, a review of returns, fees, and customer service, and post  
47 a copy of reviews conducted under this subsection to an Internet  
48 website established and maintained by the board;

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

- 1 be paid only out of moneys on deposit therein, except that, private  
2 funds or federal funding received under subsection l. of this section  
3 in order to implement the program shall not be repaid unless those  
4 funds were offered contingent upon the promise of repayment;
- 5 o. Allocate administrative fees to individual retirement  
6 accounts in the program on a pro rata basis;
- 7 p. Set minimum and maximum contribution levels in  
8 accordance with limits established for IRAs by the Internal Revenue  
9 Code;
- 10 q. Facilitate education and outreach to employers and  
11 employees;
- 12 r. Facilitate compliance by the program with all applicable  
13 requirements for the program under the Internal Revenue Code,  
14 including tax qualification requirements or any other applicable law  
15 and accounting requirements;
- 16 s. Carry out the duties and obligations of the program in an  
17 effective, efficient, and low-cost manner;
- 18 t. Exercise any and all other powers reasonably necessary for  
19 the effectuation of the purposes, objectives, and provisions of this  
20 act pertaining to the program; and
- 21 u. Deposit into the New Jersey Secure Choice Administrative  
22 Fund all grants, gifts, donations, fees, and earnings from  
23 investments from the New Jersey Secure Choice Savings Program  
24 Fund that are used to recover administrative costs. All expenses of  
25 the board shall be paid from the New Jersey Secure Choice  
26 Administrative Fund.
- 27
- 28 9. The board shall annually prepare and adopt a written  
29 statement of investment policy that includes a risk management and  
30 oversight program. This investment policy shall prohibit the board,  
31 program, and fund from borrowing for investment purposes. The  
32 risk management and oversight program shall be designed to ensure  
33 that an effective risk management system is in place to monitor the  
34 risk levels of the program and fund portfolio, to ensure that the risks  
35 taken are prudent and properly managed, to provide an integrated  
36 process for overall risk management, and to assess investment  
37 returns as well as risk to determine if the risks taken are adequately  
38 compensated compared to applicable performance benchmarks and  
39 standards. The board shall consider the statement of investment  
40 policy and any changes in the investment policy at a public hearing.
- 41
- 42 10. a. Moneys in the fund shall be invested, or reinvested, as the  
43 case may be, by the department. The department shall comply with  
44 any and all applicable federal and State laws, rules, and regulations,  
45 as well as any and all rules or regulations promulgated by the board  
46 with respect to the program and the investment of the fund,  
47 including, but not limited to, the investment policy.

1       b. The department shall provide reports as the board deems  
2 necessary for the board to oversee the department's performance  
3 and the performance of the fund.

4  
5       11. a. The board shall establish as an investment option a life-  
6 cycle fund with a target date based upon the age of the enrollee.  
7 This fund shall be the default investment option for enrollees who  
8 fail to elect an investment option unless and until the board  
9 designates by rule or regulation a new investment option as the  
10 default as described in subsection c. of this section.

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

13       (1) a conservative principal protection fund;

14       (2) a growth fund;

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

27       (4) an annuity fund.

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

38       d. Notwithstanding any other provision of this section, the  
39 board shall not offer more than five investment options in any given  
40 calendar year.

41  
42       12. Interest, investment earnings, and investment losses shall be  
43 allocated to individual program accounts as established by the board  
44 pursuant to subsection d. of section 8 of this act. An individual's  
45 retirement savings benefit under the program shall be an amount  
46 equal to the balance in the individual's program account on the date  
47 the retirement savings benefit becomes payable. The State shall



1 have no liability for the payment of any benefit to any participant in  
2 the program.

3  
4 13. a. Prior to the opening of the program for enrollment, the  
5 board shall design and disseminate to all employers an employer  
6 information packet and an employee information packet, which  
7 shall include background information on the program, appropriate  
8 disclosures for employees, and, if necessary, information regarding  
9 the vendor Internet website described in subsection j. of section 14  
10 of this act.

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

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

17 (1) the benefits and risks associated with making contributions  
18 to the program;

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

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

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

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

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

25 (7) that employees seeking financial advice should contact  
26 financial advisors, that participating employers are not in a position  
27 to provide financial advice, and that participating employers are not  
28 liable for decisions employees make pursuant to this act;

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

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

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

36 e. Participating employers shall supply the employee  
37 information packet to employees upon implementation of the  
38 program. Participating employers shall supply the employee  
39 information packet to new employees at the time of hiring, and new  
40 employees may opt out of participation in the program or elect to  
41 participate with a level of employee contributions other than three  
42 percent at that time.

43  
44 14. Except as otherwise provided in section 21 of this act, the  
45 program shall be implemented, and enrollment of employees shall  
46 begin, within 24 months after the effective date of this act. The  
47 following provisions of this section shall be in force after the board  
48 opens the program for enrollment:

1 a. Each employer shall establish a payroll deposit retirement  
2 savings arrangement to allow each employee to participate in the  
3 program not more than nine months after the board opens the  
4 program for enrollment.

5 b. Employers shall automatically enroll in the program each of  
6 their employees who has not opted out of participation in the  
7 program using the form described in subsection d. of section 13 of  
8 this act and shall provide payroll deposit retirement savings  
9 arrangements for their employees and, on behalf of the employees,  
10 deposit these funds into the program. Small employers may, but are  
11 not required to, provide payroll deposit retirement savings  
12 arrangements for each employee who elects to participate in the  
13 program.

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

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

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

43 f. (1) For any employee hired by an employer more than six  
44 months after the board opens the program for enrollment, the  
45 employer shall enroll the employee in the program no later than  
46 three months following the date of hire of the employee, unless the  
47 employee opts out of enrollment in the program prior to being  
48 enrolled.

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

6 g. An employee who opts out of the program who subsequently  
7 wants to participate through the participating employer's payroll  
8 deposit retirement savings arrangement may only enroll during the  
9 participating employer's designated open enrollment period or if  
10 permitted by the participating employer at an earlier time.

11 h. Employers shall retain the option at all times to set up any  
12 type of employer-sponsored retirement plan, such as a defined  
13 benefit plan or a 401(k), Simplified Employee Pension (SEP) plan,  
14 or Savings Incentive Match Plan for Employees (SIMPLE) plan, or  
15 to offer an automatic enrollment payroll deduction IRA, instead of  
16 having a payroll deposit retirement savings arrangement to allow  
17 employee participation in the program.

18 i. An employee may terminate his or her participation in the  
19 program at any time in a manner prescribed by the board.

20 j. The board may establish and maintain an Internet website  
21 designed to assist employers in identifying private sector providers  
22 of retirement arrangements that can be set up by the employer rather  
23 than allowing employee participation in the program under this act.  
24 The board shall provide public notice of the availability of and the  
25 process for inclusion on the Internet website before it becomes  
26 publicly available.

27  
28 15. Employee contributions deducted by the participating  
29 employer through payroll deduction shall be paid by the  
30 participating employer to the fund using one or more payroll  
31 deposit retirement savings arrangements established by the board  
32 under subsection i. of section 8 of this act, either:

33 a. On or before the last day of the month following the month  
34 in which the compensation otherwise would have been payable to  
35 the employee; or

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

41  
42 16. a. The State shall have no duty or liability to any party for  
43 the payment of any retirement savings benefits accrued by any  
44 individual under the program. Any financial liability for the  
45 payment of retirement savings benefits in excess of funds available  
46 under the program shall be borne solely by the entities with whom  
47 the board contracts to provide insurance to protect the value of the  
48 program.

1       b. No State entity, board, commission, or agency, or any  
2 officer, employee, or member thereof is liable for any loss or  
3 deficiency resulting from particular investments selected under this  
4 act, except for any liability that arises out of a breach of fiduciary  
5 duty under section 7 of this act.  
6

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

10       b. A participating employer shall not be a fiduciary, or  
11 considered to be a fiduciary, over the program. A participating  
12 employer shall not bear responsibility for the administration,  
13 investment, or investment performance of the program. A  
14 participating employer shall not be liable with regard to investment  
15 returns, program design, and benefits paid to program participants.  
16

17       18. a. The board shall annually submit:

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

23       (2) a report prepared by the board, including, but not limited to,  
24 a summary of the benefits provided by the program, the number of  
25 enrollees in the program, the percentage and amounts of investment  
26 options and rates of return, fees paid to any vendors or contractors  
27 for purposes of implementing or operating the program, and other  
28 information that is relevant to make a full, fair, and effective  
29 disclosure of the operations of the program and the fund.

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

35       b. In addition to any other statements or reports required by  
36 law, the board shall provide periodic reports at least annually to  
37 participating employers, reporting the names of each enrollee  
38 employed by the participating employer and the amounts of  
39 contributions made by the participating employer on behalf of each  
40 employee during the reporting period, as well as to enrollees,  
41 reporting contributions and investment income allocated to,  
42 withdrawals from, and balances in their program accounts for the  
43 reporting period. The reports may include any other information  
44 regarding the program as the board determines is appropriate.  
45

46       19. a. An employer who fails without reasonable cause to enroll  
47 any employee who has not opted out of participation in the program

1 within the time prescribed under section 14 of this act shall be  
2 subject to:

3 (1) for the first calendar year during which at any point a  
4 violation occurs, a written warning by the department;

5 (2) for the second calendar year during which at any point a  
6 violation occurs, a fine of \$100;

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

11 (4) for the fifth and any subsequent calendar year during which  
12 at any point a violation occurs, a fine of \$500 for each employee  
13 who was neither enrolled in nor opted out of participation in the  
14 program.

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

19 c. After a determination that an employer is subject to penalty  
20 pursuant to this section, the department shall issue a notice of  
21 proposed penalty to the employer. For purposes of subsection a. of  
22 this section, the notice issued by the department to the employer  
23 shall state the number of employees for which the penalty is  
24 proposed under paragraph (3) or (4) of subsection a. of this section  
25 and the total amount of penalties proposed. For purposes of  
26 subsection b. of this section, the department shall issue a notice of  
27 proposed penalty to the employer stating the total amount of  
28 penalties proposed under subsection b. of this section. Upon the  
29 expiration of 90 days after the date on which a notice of proposed  
30 penalty was issued, the penalties specified therein shall be deemed  
31 assessed, unless the employer had filed a protest with the  
32 department under subsection d. of this section. If, within 90 days  
33 after the date on which the notice of proposed penalty was issued, a  
34 protest is filed under subsection d. of this section, the penalties  
35 specified in the notice shall be deemed assessed when the decision  
36 of the department with respect to the protest is final.

37 d. A written protest against the proposed penalty shall be filed  
38 with the department in a form prescribed by the department, setting  
39 forth the grounds on which the protest is based. If a protest is filed  
40 within 90 days after the date the notice of proposed penalty is  
41 issued, the department shall reconsider the proposed penalty and  
42 shall grant the employer a hearing. As soon as practicable after a  
43 reconsideration and hearing of the protest filed by the employer, the  
44 department shall issue a notice of decision to the employer, setting  
45 forth the department's findings of fact and the basis of decision.  
46 The decision of the department shall become final.

47 e. As soon as practicable after the penalties specified in a  
48 notice of proposed penalty are deemed assessed, the department

1 shall give notice to the employer liable for any unpaid portion of the  
2 penalty, stating the amount due and demanding payment. The  
3 department shall provide a payment plan to employers for purposes  
4 of complying with the demand of payment for the penalty.

5 f. An employer who has overpaid a penalty assessed under this  
6 section may file a claim for refund with the department. A claim  
7 shall be in writing in a form prescribed by the department and shall  
8 state the specific grounds upon which it is founded. As soon as  
9 practicable after a claim for refund is filed, the department shall  
10 examine it and either issue a refund or issue a notice of denial. If a  
11 protest is filed, the department shall reconsider the denial and grant  
12 the employer a hearing. As soon as practicable after the  
13 reconsideration and hearing, the department shall issue a notice of  
14 decision to the employer. The notice shall set forth briefly the  
15 department's findings of fact and the basis of decision in each case  
16 decided in whole or in part adversely to the employer. A denial of a  
17 claim for refund shall be final 90 days after the date of issuance of  
18 the notice of the denial, except for those amounts denied as to  
19 which the employer has filed a protest with the department. If a  
20 protest has been timely filed, the decision of the department shall  
21 become final.

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

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

29 i. All books and records and other papers and documents  
30 relevant to the determination of any penalty due under this section  
31 shall, at all times during business hours of the day, be subject to  
32 inspection by the department or the department's authorized  
33 representatives.

34 j. The department shall require employers to report  
35 information relevant to their compliance with this act on their State  
36 income tax return. Failure to provide the compliance information  
37 requested shall not cause the income tax return to be treated as  
38 unprocessable for purposes of the applicable tax law.

39 k. For purposes of any provision of State law allowing the  
40 department or any other agency of this State to offset an amount  
41 owed to a taxpayer against a tax liability of that taxpayer or  
42 allowing the department to offset an overpayment of tax against any  
43 liability owed to the State, a penalty assessed under this section  
44 shall be deemed to be a tax liability of the employer and any refund  
45 due to an employer shall be deemed to be an overpayment of tax of  
46 the employer.

47 l. Except as provided in this subsection, all information  
48 received by the department from returns filed by an employer or

1 from any investigation conducted under the provisions of this act  
2 shall be confidential, except for official purposes within the  
3 department or pursuant to official procedures for collection of  
4 penalties assessed under this act. No provision of this subsection  
5 shall be construed as prohibiting the department from publishing or  
6 making available to the public reasonable statistics concerning the  
7 operation of this act wherein the contents of returns are grouped  
8 into aggregates in such a way that the specific information of any  
9 individual employer shall not be disclosed. No provision of this  
10 subsection shall be construed as prohibiting the department from  
11 divulging information to an authorized representative of the  
12 employer or to any person pursuant to a request or authorization  
13 made by the employer or by an authorized representative of the  
14 employer.

15 m. The department may charge the board a reasonable fee for its  
16 costs in performing its duties under this section to the extent that  
17 those costs have not been recovered from penalties imposed under  
18 this section.

19 n. This section shall become operative nine months after the  
20 board notifies the department that the program has been  
21 implemented. Upon receipt of the notification from the board, the  
22 department shall immediately post on its Internet website a notice  
23 stating that this section is operative and the date that it is first  
24 operative. This notice shall include a statement that, rather than  
25 enrolling employees in the program under this act, employers may  
26 sponsor an alternative arrangement, including, but not limited to, a  
27 defined benefit plan, 401(k) plan, a Simplified Employee Pension  
28 (SEP) plan, a Savings Incentive Match Plan for Employees  
29 (SIMPLE) plan, or an automatic payroll deduction IRA offered  
30 through a private provider. The board shall provide a link to the  
31 vendor Internet website described in subsection j. of section 14 of  
32 this act.

33

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

38

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

42

43 22. The board shall request in writing an opinion or ruling from  
44 the appropriate entity with jurisdiction over the federal "Employee  
45 Retirement Income Security Act of 1974," 29 U.S.C. s.1001 et seq.  
46 regarding the applicability of that act to the program. The board  
47 shall not implement the program if the IRA arrangements offered  
48 under the program fail to qualify for the favorable federal income

1 tax treatment ordinarily accorded to IRAs under the Internal  
2 Revenue Code or if it is determined that the program is an employee  
3 benefit plan and State or employer liability is established under the  
4 "Employee Retirement Income Security Act of 1974," 29 U.S.C.  
5 s.1001 et seq.

6  
7 23. This act shall take effect immediately.  
8  
9

10 STATEMENT  
11

12 This bill establishes the "New Jersey Secure Choice Savings  
13 Program" (program), a retirement savings program in the form of an  
14 automatic enrollment payroll deduction Individual Retirement  
15 Account (IRA) for certain private sector employees. The program  
16 promotes retirement savings for private sector employees employed  
17 by "employers" and "small employers," as defined by the bill, in a  
18 convenient, low cost, and portable manner.

19 The bill defines "employer" as a person or entity engaged in a  
20 business, industry, profession, trade, or other enterprise in New  
21 Jersey, whether for profit or not for profit, that has at no time during  
22 the previous calendar year employed fewer than 25 employees in  
23 the State, has been in business at least two years, and has not  
24 offered a qualified retirement plan, including, but not limited to, a  
25 plan qualified under section 401(a), section 401(k), section 403(a),  
26 section 403(b), section 408(k), section 408(p), or section 457(b) of  
27 the Internal Revenue Code of 1986 in the preceding two years. The  
28 term "employer" does not mean the State, its political subdivisions,  
29 any office, department, division, bureau, board, commission or  
30 agency of the State or of its political subdivisions, or any public  
31 body in the State. A "small employer," is defined in the bill as a  
32 person or entity engaged in a business, industry, profession, trade,  
33 or other enterprise in New Jersey, whether for profit or not for  
34 profit, that employed less than 25 employees at any one time in the  
35 State throughout the previous calendar year, or has been in business  
36 less than two years, or both, but that notifies the Department of the  
37 Treasury that it is interested in being a participating employer. The  
38 bill defines "employee" as any individual who is 18 years of age or  
39 older, who lives in this State or is employed by an employer in this  
40 State, and whose wages are subject to withholding as provided in  
41 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

42 The bill creates the New Jersey Secure Choice Savings Program  
43 Fund (fund) which will consist of funds received from enrollees in  
44 the program and participating employers, and is separate and apart  
45 from all public moneys or funds of this State. The bill provides that  
46 amounts deposited in the fund shall not constitute property of the  
47 State, the fund shall not be construed to be a department, institution,



1 or agency of the State, and that amounts deposited in the fund shall  
2 not be commingled with State funds.

3 The bill creates the New Jersey Secure Choice Savings Board  
4 (board) to implement the program and oversee the fund. The bill  
5 also creates the New Jersey Secure Choice Administrative Fund as a  
6 nonappropriated separate and apart trust fund in the General Fund,  
7 to be used to pay administrative expenses incurred by the board in  
8 the performance of its duties hereunder. The administrative fund  
9 may receive any grants or other moneys designated for  
10 administrative purposes from the State, or any federal or local  
11 government, or other person, firm, partnership, or corporation.

12 The bill sets forth the method by which the members of the board  
13 will be appointed and by whom. The board will consist of the  
14 following seven members: the State Treasurer, or his or her  
15 designee, who shall serve as chair; the State Comptroller, or his or  
16 her designee; the Director of the Office of Management and Budget,  
17 or the director's designee; two public representatives with expertise  
18 in retirement savings plan administration or investment, or both, of  
19 which one is appointed by the Speaker of the General Assembly and  
20 one is appointed by the Senate President; a representative of  
21 participating employers, and a representative of enrollees, both of  
22 whom are appointed by the Governor. Members of the board will  
23 serve without compensation. Each appointment to the board by the  
24 Governor will be subject to the advice and consent of the Senate.

25 The bill sets forth several duties of the board with respect to  
26 implementing the program, including appointing a fund trustee,  
27 governing risk management, determining investment options,  
28 entering into contracts necessary for the administration of the  
29 program and the fund, employing a staff to support the  
30 implementation of the program, and conducting a performance  
31 review of any investment vendors. The bill also requires the board  
32 to establish a process for enrollment in the program, opting out of  
33 participation, selecting a contribution level and investment option,  
34 and terminating participation. The bill provides that other duties of  
35 the board include accepting grants, appropriations, or other moneys  
36 from the State, any unit of federal, State, or local government, or  
37 any other person, firm, partnership or corporation for deposit into  
38 the fund, whether for investment or administrative purposes,  
39 making provisions for the payment of administrative costs and  
40 expenses for the creation, management and operation of the  
41 program, and keeping annual administrative fees, which include  
42 investment fees, as low as possible, but not to exceed 0.6 percent of  
43 the fund's total balance. The bill also provides that subject to  
44 appropriation, the State may pay administrative costs associated  
45 with the creation and management of the program until sufficient  
46 assets are available in the fund for that purpose.

47 The bill requires that the program be implemented, and that  
48 enrollment of employees begin, within 24 months after the effective

1 date of the bill. No later than nine months after program  
2 implementation and the opening of enrollment, each employer  
3 covered by the bill must establish a payroll deposit retirement  
4 savings arrangement to allow its employees to participate in the  
5 program. An employer will automatically enroll in the program  
6 each of its employees who has not opted out of participation in the  
7 program. The employer will provide payroll deduction retirement  
8 savings arrangements for each of its employees and deposit, on  
9 behalf of its employees, these funds into the program. Small  
10 employers may, but are not required to, provide payroll deduction  
11 retirement savings arrangements for each employee who elects to  
12 participate in the program.

13 The bill requires that employers enroll new employees within  
14 three months after the date of hire, unless the employee opts out of  
15 enrollment. Newly hired employees who have previously been  
16 enrolled are permitted to make contributions directly into their  
17 accounts, until such time as they are enrolled by their new employer  
18 or opt out of enrollment in the program.

19 The bill provides that employees have the ability to select a  
20 contribution level, and may change their contribution level no more  
21 than once every calendar quarter, subject to rules and regulations  
22 promulgated by the board. If an employee fails to select a  
23 contribution level, then the default contribution level will be three  
24 percent of the employee's wages. Employees may select an  
25 investment option from the investment options provided by the  
26 board, which shall not offer more than five investment options in  
27 any calendar year. Employees may change their investment option  
28 no more than once every calendar quarter, subject to the rules and  
29 regulations promulgated by the board. If an employee fails to select  
30 an investment option, that employee's contributions shall be placed  
31 in the default investment option selected by the board. Initially, the  
32 life-cycle fund will be the default investment option. Employees  
33 may terminate their participation in the program at any time in a  
34 manner prescribed by the board.

35 The bill also provides that, following initial implementation of  
36 the program, at least once every year, participating employers must  
37 designate an open enrollment period during which employees who  
38 previously opted out of the program may enroll in the program. An  
39 employee who opts out of the program but subsequently wants to  
40 participate through the participating employer's payroll deposit  
41 retirement savings arrangement may only enroll during the  
42 participating employer's designated open enrollment period, or at an  
43 earlier time if permitted by the participating employer.

44 The bill provides that the State has no duty or liability to any  
45 party for the payment of any retirement savings benefits accrued by  
46 any individual under the program. The bill requires that any  
47 financial liability for the payment of retirement savings benefits in  
48 excess of funds available under the program be borne solely by the

1 entities with whom the board contracts to provide insurance to  
2 protect the value of the program. No State entity, board,  
3 commission, or agency, or any officer, employee, or member  
4 thereof is liable for any loss or deficiency resulting from particular  
5 investments selected under the bill, except for any liability that  
6 arises out of a breach of fiduciary duty.

7 The bill provides that participating employers will not have any  
8 liability for an employee's decision to participate in, or opt out of,  
9 the program or for the investment decisions of the board or of any  
10 enrollee. A participating employer will not be a fiduciary, or  
11 considered to be a fiduciary, over the program. Nor will a  
12 participating employer bear responsibility for the administration,  
13 investment, or investment performance of the program. A  
14 participating employer will not be liable with regard to investment  
15 returns, program design, and benefits paid to program participants.

16 The bill establishes penalties for employers who, without  
17 reasonable cause, fail to enroll employees who have not opted out  
18 of participation in the program. Those employers are subject to: for  
19 the first calendar year during which at any point a violation occurs,  
20 a written warning by the department; for the second calendar year  
21 during which at any point a violation occurs, a fine of \$100; for the  
22 third and fourth calendar year during which at any point a violation  
23 occurs, a fine of \$250 for each employee who was neither enrolled  
24 in nor opted out of participation in the program; and for the fifth  
25 and any subsequent calendar year during which at any point a  
26 violation occurs, a fine of \$500 for each employee who was neither  
27 enrolled in nor opted out of participation in the program. The bill  
28 also provides that an employer who collects employee contributions  
29 but fails to remit any portion of the contributions to the fund shall  
30 be subject to a penalty of \$2,500 for a first offense, and \$5,000 for  
31 the second and each subsequent offense.

32 The bill provides that the Department of the Treasury require  
33 employers to report information relevant to their compliance with  
34 this act on their State income tax return, but the tax return will not  
35 be treated as unprocessable for tax purposes if the employer fails to  
36 provide the requested compliance information. The bill also  
37 provides that a penalty assessed under the provisions of the bill  
38 shall be deemed to be a tax liability of the employer for purposes of  
39 any State law allowing the department or other agency of the State  
40 to offset an amount owed to a taxpayer against a tax liability of that  
41 taxpayer or allowing the department to offset an overpayment of tax  
42 against any liability owed to the State.

43 Finally, the bill provides that if the board does not obtain  
44 adequate funds to implement the program within the time frame set  
45 forth by the bill, the board may delay the implementation of the  
46 program. The board must request in writing an opinion or ruling  
47 from the appropriate entity with jurisdiction over the federal  
48 "Employee Retirement Income Security Act of 1974" (29 U.S.C.

1 s.1001 et seq.) regarding the applicability of that act to the program.  
2 The board may not implement the program if the IRA arrangements  
3 offered under the program fail to qualify for the favorable federal  
4 income tax treatment ordinarily accorded to IRAs under the Internal  
5 Revenue Code or if it is determined that the program is an employee  
6 benefit plan and State or employer liability is established under the  
7 "Employee Retirement Income Security Act of 1974."