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

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning individual retirement savings for certain workers and supplementing Title 43 of the Revised Statutes.

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

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

2. As used in this act:
   "Board" means the New Jersey Secure Choice Savings Board established pursuant to this act.
   "Department" means the Department of the Treasury.
   "Employee" means any individual who is 18 years of age or older, who lives in this State or is employed by an employer in this State, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
   "Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that has at no time during the previous calendar year employed fewer than 25 employees in the State, has been in business at least two years, and has not offered a qualified retirement plan, including, but not limited to, a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p), or section 457(b) of the Internal Revenue Code in the preceding two years. "Employer” shall not mean the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or one of its political subdivisions, or any public body in the State.
   "Enrollee" means any employee who is enrolled in the program.
   "Fund" means the New Jersey Secure Choice Savings Program Fund established pursuant to this act.
   "Internal Revenue Code" means the federal Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq., or any successor law, in effect for the calendar year.
   "IRA" means a standard Individual Retirement Account under section 408, or a Roth Individual Retirement Account under section 408A, of the Internal Revenue Code.
   "Participating employer" means an employer or small employer that provides a payroll deposit retirement savings arrangement as provided under this act for its employees who are enrollees in the program.
   "Payroll deposit retirement savings arrangement” means an arrangement by which a participating employer allows enrollees to remit payroll deduction contributions to the program.
   "Program" means the New Jersey Secure Choice Savings Program established pursuant to this act.
"Small employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that employed less than 25 employees at any one time in the State throughout the previous calendar year, or has been in business less than two years, or both, but that notifies the board that it is interested in being a participating employer.

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

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

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

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

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

6. There is established the New Jersey Secure Choice Savings Board.
   a. The board shall consist of the following members:
      (1) the State Treasurer, or the State Treasurer’s designee, who shall serve as chair;
      (2) the State Comptroller, or the State Comptroller’s designee;
      (3) the Director of the Office of Management and Budget, or the director’s designee;
      (4) two representatives of the general public with expertise in retirement savings plan administration or investment, or both, of which one representative shall be appointed by the Speaker of General Assembly and one representative appointed by the Senate President;
      (5) a representative of participating employers, appointed by the Governor; and
      (6) a representative of enrollees, appointed by the Governor.
   b. Members of the board shall serve without compensation.
   c. The initial terms of the appointees shall be as follows: the public representative appointed by the Senate President, for four years; the public representative appointed by the Speaker of the General Assembly, for two years; the representative of participating employers, for three years; and the representative of enrollees for one year. Thereafter, all of the appointees shall be for terms of four years.
   d. A vacancy in the term of an appointed board member shall be filled for the balance of the unexpired term in the same manner as the original appointment.
   e. Each appointment by the Governor shall be subject to the advice and consent of the Senate. In case of a vacancy during a recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, at which time the Governor shall appoint a person to fill the office.
   f. Each board member, prior to assuming office, shall take an oath that the member will diligently and honestly administer the affairs of the board and that the member will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the program. The oath shall be certified by the officer before whom it is taken and immediately filed with the Secretary of State.

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

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

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

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

a. Design, establish, and operate the program in a manner that:
   (1) accords with best practices for retirement savings vehicles;
   (2) maximizes participation, savings, and sound investment practices;
   (3) maximizes simplicity, including ease of administration for participating employers and enrollees;
   (4) provides an efficient product to enrollees by pooling investment funds;
   (5) ensures the portability of benefits; and
   (6) provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement;

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

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

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

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

f. Conduct a review of the performance of any investment vendors not less than once every two years, including, but not limited to, a review of returns, fees, and customer service, and post a copy of reviews conducted under this subsection to an Internet website established and maintained by the board;
g. Determine the number and duties of staff members needed to administer the program and employ a staff, including, as needed, appointing a program administrator, and entering into contracts with the State Treasurer to make employees of the department available to administer the program;

h. Ensure that moneys in the fund be held and invested as pooled investments described in section 11 of this act, with a view to achieving cost savings through efficiencies and economies of scale;

i. Evaluate and establish the process by which an enrollee is able to contribute a portion of the enrollee’s wages to the program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the program, including, but not limited to, contracting with financial service companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or similar arrangements;

j. Design and establish the process for enrollment by an employee pursuant to section 14 of this act, including the process by which an employee can opt not to participate in the program, select a contribution level, select an investment option, and terminate participation in the program;

k. Evaluate and establish the process by which an individual may voluntarily enroll in and make contributions to the program;

l. Accept any grants, appropriations, or other moneys from the State, any unit of federal, State, or local government, or any other person, firm, partnership, or corporation solely for deposit into the fund, whether for investment or administrative purposes;

m. Evaluate the need for, and procure as needed, insurance against any and all loss in connection with the property, assets, or activities of the program, and indemnify as needed each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board;

n. Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the program, including the costs associated with subsections e., g., i., and m. of this section, subsection b. of section 11, subsection a. of section 18, and subsection m. of section 19 of this act, and keep annual administrative fees as low as possible, but in no event shall annual administrative fees exceed 0.6 percent of the fund’s total balance. “Administrative fees” shall include any investment fees incurred pursuant to this section. Subject to appropriation, the State may pay administrative costs associated with the creation and management of the program until sufficient assets are available in the fund for that purpose. Thereafter, all administrative costs of the fund, including repayment of any funds provided by the State, shall
be paid only out of moneys on deposit therein, except that, private
funds or federal funding received under subsection l. of this section
in order to implement the program shall not be repaid unless those
funds were offered contingent upon the promise of repayment;
o. Allocate administrative fees to individual retirement
accounts in the program on a pro rata basis;
p. Set minimum and maximum contribution levels in
accordance with limits established for IRAs by the Internal Revenue
Code;
q. Facilitate education and outreach to employers and
employees;
r. Facilitate compliance by the program with all applicable
requirements for the program under the Internal Revenue Code,
including tax qualification requirements or any other applicable law
and accounting requirements;
s. Carry out the duties and obligations of the program in an
effective, efficient, and low-cost manner;
t. Exercise any and all other powers reasonably necessary for
the effectuation of the purposes, objectives, and provisions of this
act pertaining to the program; and
u. Deposit into the New Jersey Secure Choice Administrative
Fund all grants, gifts, donations, fees, and earnings from
investments from the New Jersey Secure Choice Savings Program
Fund that are used to recover administrative costs. All expenses of
the board shall be paid from the New Jersey Secure Choice
Administrative Fund.

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

10. a. Moneys in the fund shall be invested, or reinvested, as the
case may be, by the department. The department shall comply with
any and all applicable federal and State laws, rules, and regulations,
as well as any and all rules or regulations promulgated by the board
with respect to the program and the investment of the fund,
including, but not limited to, the investment policy.
b. The department shall provide reports as the board deems necessary for the board to oversee the department’s performance and the performance of the fund.

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

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

(1) a conservative principal protection fund;

(2) a growth fund;

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

(4) an annuity fund.

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

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

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

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

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

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

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

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

(3) how to opt out of the program;

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

(5) the process for withdrawal of retirement savings;

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

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

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

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

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

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

14. Except as otherwise provided in section 21 of this act, the
program shall be implemented, and enrollment of employees shall
begin, within 24 months after the effective date of this act. The
following provisions of this section shall be in force after the board
opens the program for enrollment:
a. Each employer shall establish a payroll deposit retirement savings arrangement to allow each employee to participate in the program not more than nine months after the board opens the program for enrollment.

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

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

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

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

f. (1) For any employee hired by an employer more than six months after the board opens the program for enrollment, the employer shall enroll the employee in the program no later than three months following the date of hire of the employee, unless the employee opts out of enrollment in the program prior to being enrolled.
(2) Any newly hired employee who has previously been enrolled in the program shall have the option of making direct contributions into that employee’s existing account, provided that paragraph (1) of this subsection also applies to the employer of a newly hired employee who has been previously enrolled in the program.

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

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

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

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

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

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

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

16. a. The State shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the program. Any financial liability for the payment of retirement savings benefits in excess of funds available under the program shall be borne solely by the entities with whom the board contracts to provide insurance to protect the value of the program.
b. No State entity, board, commission, or agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from particular investments selected under this act, except for any liability that arises out of a breach of fiduciary duty under section 7 of this act.

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

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

18. a. The board shall annually submit:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16

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

23. This act shall take effect immediately.

STATEMENT

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

The bill defines “employer” as a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that has at no time during the previous calendar year employed fewer than 25 employees in the State, has been in business at least two years, and has not offered a qualified retirement plan, including, but not limited to, a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p), or section 457(b) of the Internal Revenue Code of 1986 in the preceding two years. The term “employer” does not mean the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or of its political subdivisions, or any public body in the State. A “small employer,” is defined in the bill as a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that employed less than 25 employees at any one time in the State throughout the previous calendar year, or has been in business less than two years, or both, but that notifies the Department of the Treasury that it is interested in being a participating employer. The bill defines “employee” as any individual who is 18 years of age or older, who lives in this State or is employed by an employer in this State, and whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.A.4A:1-1 et seq.

The bill creates the New Jersey Secure Choice Savings Program Fund (fund) which will consist of funds received from enrollees in the program and participating employers, and is separate and apart from all public moneys or funds of this State. The bill provides that amounts deposited in the fund shall not constitute property of the State, the fund shall not be construed to be a department, institution,
The bill creates the New Jersey Secure Choice Savings Board (board) to implement the program and oversee the fund. The bill also creates the New Jersey Secure Choice Administrative Fund as a nonappropriated separate and apart trust fund in the General Fund, to be used to pay administrative expenses incurred by the board in the performance of its duties hereunder. The administrative fund may receive any grants or other moneys designated for administrative purposes from the State, or any federal or local government, or other person, firm, partnership, or corporation.

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

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

The bill requires that the program be implemented, and that enrollment of employees begin, within 24 months after the effective
date of the bill. No later than nine months after program
implementation and the opening of enrollment, each employer
covered by the bill must establish a payroll deposit retirement
savings arrangement to allow its employees to participate in the
program. An employer will automatically enroll in the program
each of its employees who has not opted out of participation in the
program. The employer will provide payroll deduction retirement
savings arrangements for each of its employees and deposit, on
behalf of its employees, these funds into the program. Small
employers may, but are not required to, provide payroll deduction
retirement savings arrangements for each employee who elects to
participate in the program.

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

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

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

The bill provides that the State has no duty or liability to any
party for the payment of any retirement savings benefits accrued by
any individual under the program. The bill requires that any
financial liability for the payment of retirement savings benefits in
excess of funds available under the program be borne solely by the
entities with whom the board contracts to provide insurance to
protect the value of the program. No State entity, board,
commission, or agency, or any officer, employee, or member
thereof is liable for any loss or deficiency resulting from particular
investments selected under the bill, except for any liability that
arises out of a breach of fiduciary duty.

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

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

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

Finally, the bill provides that if the board does not obtain
adequate funds to implement the program within the time frame set
forth by the bill, the board may delay the implementation of the
program. The board must request in writing an opinion or ruling
from the appropriate entity with jurisdiction over the federal
s.1001 et seq.) regarding the applicability of that act to the program. The board may not implement the program if the IRA arrangements offered under the program fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that the program is an employee benefit plan and State or employer liability is established under the “Employee Retirement Income Security Act of 1974.”