

[Second Reprint]

ASSEMBLY, No. 4134

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 11, 2018

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SYNOPSIS

“New Jersey Secure Choice Savings Program Act”; establishes retirement savings program for certain workers; establishes standard contribution level of 3 percent.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on February 7, 2019, with amendments.

(Sponsorship Updated As Of: 2/26/2019)

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 ²For the purposes of this act, an employee who is co-employed by
19 an employee leasing company or professional employer
20 organization and a client company pursuant to an employee leasing
21 agreement or professional employer agreement, as such terms are
22 defined in section 1 of P.L.2001, c.260 (C.34:8-67), shall be treated
23 as employed by the client company and not by the employee leasing
24 company or professional employer organization.²

25 "Employer" means a person or entity engaged in a business,
26 industry, profession, trade, or other enterprise in New Jersey,
27 whether for profit or not for profit, that has at no time during the
28 previous calendar year employed fewer than 25 employees in the
29 State, has been in business at least two years, and has not offered a
30 qualified retirement plan, including, but not limited to, a plan
31 qualified under section 401(a), section 401(k), section 403(a),
32 section 403(b), section 408(k), section 408(p), or section 457(b) of
33 the Internal Revenue Code², or a plan sponsored by an employee
34 leasing company or professional employer organization with which
35 the employer has an employee leasing agreement or professional
36 employer agreement as such terms are defined in section 1 of
37 P.L.2001, c.260 (C. 34:8-67).²

38 in the preceding two years. “Employer” shall not mean the State,
39 its political subdivisions, any office, department, division, bureau,
40 board, commission or agency of the State or one of its political
41 subdivisions, or any public body in the State.

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

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

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted December 10, 2018.

²Senate SBA committee amendments adopted February 7, 2019.

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

4 "IRA" means a standard Individual Retirement Account under
5 section 408, or a Roth Individual Retirement Account under section
6 408A, of the Internal Revenue Code.

7 "Participating employer" means an employer or small employer
8 that provides a payroll deposit retirement savings arrangement as
9 provided under this act for its employees who are enrollees in the
10 program.

11 "Payroll deposit retirement savings arrangement" means an
12 arrangement by which a participating employer allows enrollees to
13 remit payroll deduction contributions to the program.

14 "Program" means the New Jersey Secure Choice Savings
15 Program established pursuant to this act.

16 "Small employer" means a person or entity engaged in a
17 business, industry, profession, trade, or other enterprise in New
18 Jersey, whether for profit or not for profit, that employed less than
19 25 employees at any one time in the State throughout the previous
20 calendar year, or has been in business less than two years, or both,
21 but that notifies the board that it is interested in being a
22 participating employer.

23 "Wages" means any compensation within the meaning of section
24 219(f)(1) of the Internal Revenue Code that is received by an
25 enrollee from a participating employer ²or employee leasing
26 company or professional employer organization with which the
27 enrollee's employer has an employee leasing agreement or
28 professional employer agreement as such terms are defined in
29 section 1 of P.L.2001, c.260 (C. 34:8-67)² during the calendar year.

30

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

37

38 4. a. The New Jersey Secure Choice Savings Program Fund is
39 established as a special fund outside of the General Fund, separate
40 and apart from all public moneys or funds of this State, with the
41 board established pursuant to section 6 of this act as its trustee. The
42 fund shall include the individual retirement accounts of enrollees,
43 which shall be accounted for as individual accounts. Moneys in the
44 fund shall consist of moneys received from enrollees ²directly² and
45 ²through² participating employers pursuant to automatic payroll
46 deductions and contributions to savings made pursuant this act. The
47 fund shall be operated in a manner determined by the board,
48 provided that the fund is operated so that the accounts of enrollees

1 established under the program meet the requirements for IRAs
2 under the Internal Revenue Code.

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

8
9 5. The New Jersey Secure Choice Administrative Fund is
10 created as a nonappropriated separate and apart trust fund ²[in]
11 outside of² the General Fund ²in the Department of the Treasury, to
12 be used exclusively for the purpose of this act, P.L. , c. (C)
13 (pending before the Legislature as this bill)². The board shall use
14 moneys in the administrative fund to pay for administrative
15 expenses it incurs in the performance of its duties under this act.
16 The board shall use moneys in the administrative fund to cover
17 startup administrative expenses it incurs in the performance of its
18 duties under this act. The administrative fund may receive any
19 grants or other moneys designated for administrative purposes from
20 the State, or any unit of federal or local government, or any other
21 person, firm, partnership, or corporation. Any interest earnings that
22 are attributable to moneys in the administrative fund shall be
23 deposited into the administrative fund.

24
25 6. There is established ²in, but not of, the Department of the
26 Treasury² the New Jersey Secure Choice Savings Board.

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

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

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

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

33 (4) two representatives of the general public with expertise in
34 retirement savings plan administration or investment, or both, of
35 which one representative shall be appointed ²the Governor upon the
36 recommendation of² by the Speaker of General Assembly and one
37 representative appointed by ²the Governor upon the
38 recommendation of² the Senate President¹, with both appointments
39 being made in consultation with organizations representing
40 business, including organizations representing businesses or
41 professionals in the securities and investment industries¹;

42 (5) a representative of ²[participating employers] a business
43 trade association², appointed by the Governor; and

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

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

46 c. The initial terms of the appointees shall be as follows: the
47 public representative ²[appointed] recommended² by the Senate

1 President, for four years; the public representative ²**[appointed]**
2 recommended² by the Speaker of the General Assembly, for two
3 years; the representative of ²**[participating employers]** a business
4 trade orgaization², for three years; and the representative of
5 enrollees for one year. Thereafter, all of the appointees shall be for
6 terms of four years.

7 d. A vacancy in the term of an appointed board member shall
8 be filled for the balance of the unexpired term in the same manner
9 as the original appointment.

10 e. Each appointment by the Governor ²not appointed upon the
11 recommendation of the Senate President or the Speaker of the
12 General Assembly² shall be subject to the advice and consent of the
13 Senate. In case of a vacancy during a recess of the Senate, the
14 Governor shall make a temporary appointment until the next
15 meeting of the Senate, at which time the Governor shall appoint a
16 person to fill the office.

17 f. Each board member, prior to assuming office, shall take an
18 oath that the member will diligently and honestly administer the
19 affairs of the board and that the member will not knowingly violate
20 or willingly permit to be violated any of the provisions of law
21 applicable to the program. The oath shall be certified by the officer
22 before whom it is taken and immediately filed with the Secretary of
23 State.

24
25 7. The board, the individual members of the board, the trustee
26 appointed under subsection b. of section 8 of this act, any other
27 agents appointed or engaged by the board, and all persons serving
28 as program staff shall discharge their duties with respect to the
29 program solely in the interest of the program's enrollees and
30 beneficiaries as follows:

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

36 b. By using any contributions paid by employees ²directly² and
37 ²through participating² employers ²pursuant to automatic payroll
38 deductions and contributions² into the fund exclusively for the
39 purpose of paying benefits to the enrollees of the program, for the
40 cost of administration of the program, and for investments made for
41 the benefit of the program.

42
43 8. In addition to the other duties and responsibilities provided
44 in this act, the board shall:

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

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

- 1 (2) maximizes participation, savings, and sound investment
2 practices;
- 3 (3) maximizes simplicity, including ease of administration for
4 participating employers and enrollees;
- 5 (4) provides an efficient product to enrollees by pooling
6 investment funds;
- 7 (5) ensures the portability of benefits; and
- 8 (6) provides for the deaccumulation of enrollee assets in a
9 manner that maximizes financial security in retirement;
- 10 b. Appoint a trustee to the fund in compliance with section 408
11 of the Internal Revenue Code;
- 12 c. Explore and establish investment options, subject to section
13 11 of this act, that offer employees returns on contributions and the
14 conversion of individual retirement savings account balances to
15 secure retirement income without incurring debt or liabilities to the
16 State;
- 17 d. Establish the process by which interest, investment earnings,
18 and investment losses are allocated to individual program accounts
19 on a pro rata basis and are computed at the interest rate on the
20 balance of an individual's account;
- 21 e. Make and enter into contracts necessary for the
22 administration of the program and the fund, including, but not
23 limited to, retaining and contracting with investment managers,
24 private financial institutions, other financial and service providers,
25 consultants, actuaries, counsel, auditors, third-party administrators,
26 and other professionals as necessary;
- 27 f. Conduct a review of the performance of any investment
28 vendors not less than once every two years, including, but not
29 limited to, a review of returns, fees, and customer service, and post
30 a copy of reviews conducted under this subsection to an Internet
31 website established and maintained by the board;
- 32 g. Determine the number and duties of staff members needed to
33 administer the program and employ a staff, including, as needed,
34 appointing a program administrator, and entering into contracts with
35 the State Treasurer to make employees of the department available
36 to administer the program;
- 37 h. Ensure that moneys in the fund be held and invested as
38 pooled investments described in section 11 of this act, with a view
39 to achieving cost savings through efficiencies and economies of
40 scale;
- 41 i. Evaluate and establish the process by which an enrollee is
42 able to contribute a portion of the enrollee's wages to the program
43 for automatic deposit of those contributions and the process by
44 which the participating employer provides a payroll deposit
45 retirement savings arrangement to forward those contributions and
46 related information to the program, including, but not limited to,
47 contracting with financial service companies and third-party
48 administrators with the capability to receive and process employee

- 1 information and contributions for payroll deposit retirement savings
2 arrangements or similar arrangements;
- 3 j. Design and establish the process for enrollment by an
4 employee pursuant to section 14 of this act, including the process
5 by which an employee can opt not to participate in the program,
6 select a contribution level, select an investment option, and
7 terminate participation in the program;
- 8 k. Evaluate and establish the process by which an individual
9 may voluntarily enroll in and make contributions to the program;
- 10 l. Accept any grants, appropriations, or other moneys from the
11 State, any unit of federal, State, or local government, or any other
12 person, firm, partnership, or corporation solely for deposit into the
13 fund, whether for investment or administrative purposes;
- 14 m. Evaluate the need for, and procure as needed, insurance
15 against any and all loss in connection with the property, assets, or
16 activities of the program, and indemnify as needed each member of
17 the board from personal loss or liability resulting from a member's
18 action or inaction as a member of the board;
- 19 n. Make provisions for the payment of administrative costs and
20 expenses for the creation, management, and operation of the
21 program, including the costs associated with subsections e., g., i.,
22 and m. of this section, subsection b. of section 11, subsection a. of
23 section 18, and subsection m. of section 19 of this act, and keep
24 annual administrative fees as low as possible, but in no event shall
25 annual administrative fees exceed 0.6 percent of the fund's total
26 balance¹, except that, during the first three years after the
27 establishment of the program annual administrative fees may be set
28 at not more than 0.75 percent of the fund's total balance¹.
29 "Administrative fees" shall include any investment fees incurred
30 pursuant to this section. Subject to appropriation, the State may pay
31 administrative costs associated with the creation and management
32 of the program until sufficient assets are available in the fund for
33 that purpose. Thereafter, all administrative costs of the fund,
34 including repayment of any funds provided by the State, shall be
35 paid only out of moneys on deposit therein, except that, private
36 funds or federal funding received under subsection l. of this section
37 in order to implement the program shall not be repaid unless those
38 funds were offered contingent upon the promise of repayment;
- 39 o. Allocate administrative fees to individual retirement
40 accounts in the program on a pro rata basis;
- 41 p. Set minimum and maximum contribution levels in
42 accordance with limits established for IRAs by the Internal Revenue
43 Code;
- 44 q. Facilitate education and outreach to employers and
45 employees², including the promotion of the benefits of retirement
46 savings and other information that promote financial literacy
47 necessary for sound financial decision-making²;

1 r. Facilitate compliance by the program with all applicable
2 requirements for the program under the Internal Revenue Code,
3 including tax qualification requirements or any other applicable law
4 and accounting requirements;

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

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

10 u. Deposit into the New Jersey Secure Choice Administrative
11 Fund all grants, gifts, donations, fees, and earnings from
12 investments from the New Jersey Secure Choice Savings Program
13 Fund that are used to recover administrative costs. All expenses of
14 the board shall be paid from the New Jersey Secure Choice
15 Administrative Fund.

16
17 9. The board shall annually prepare and adopt a written
18 statement of investment policy that includes a risk management and
19 oversight program. This investment policy shall prohibit the board,
20 program, and fund from borrowing for investment purposes. The
21 risk management and oversight program shall be designed to ensure
22 that an effective risk management system is in place to monitor the
23 risk levels of the program and fund portfolio, to ensure that the risks
24 taken are prudent and properly managed, to provide an integrated
25 process for overall risk management, and to assess investment
26 returns as well as risk to determine if the risks taken are adequately
27 compensated compared to applicable performance benchmarks and
28 standards. The board shall consider the statement of investment
29 policy and any changes in the investment policy at a public hearing.

30
31 10. a. Moneys in the fund shall be invested, or reinvested, as the
32 case may be, by the department. The department shall comply with
33 any and all applicable federal and State laws, rules, and regulations,
34 as well as any and all rules or regulations promulgated by the board
35 with respect to the program and the investment of the fund,
36 including, but not limited to, the investment policy.

37 b. The department shall provide reports as the board deems
38 necessary for the board to oversee the department's performance
39 and the performance of the fund.

40
41 11. a. ²[The board shall establish as an investment option a life-
42 cycle fund with a target date based upon the age of the enrollee.
43 This fund shall be the default investment option for enrollees who
44 fail to elect an investment option unless and until the board
45 designates by rule or regulation a new investment option as the
46 default as described in subsection c. of this section.

47 b. ²]The board may ²[also]² establish any or all of the following
48 ²[additional]² investment options:

- 1 (1) ²[a conservative principal protection fund;
- 2 (2) a growth fund;
- 3 (3) a secure return fund whose primary objective is the
- 4 preservation of the safety of principal and the provision of a stable
- 5 and low-risk rate of return. If the board elects to establish a secure
- 6 return fund, the board may procure any insurance, annuity, or other
- 7 product to insure the value of enrollees' accounts and guarantee a
- 8 rate of return. The cost of this funding mechanism shall be paid out
- 9 of the fund. Under no circumstances shall the board, program,
- 10 fund, the State, or any participating employer assume any liability
- 11 for investment or actuarial risk. The board shall determine whether
- 12 to establish such investment options based upon an analysis of their
- 13 cost, risk profile, benefit level, feasibility, and ease of
- 14 implementation;]² ¹[or]¹
- 15 ²[(4) an annuity fund¹;
- 16 (5)]² a capital preservation fund, which prioritizes the security
- 17 of the deposit over the rate of return. If the board elects to establish
- 18 a capital preservation fund, the board may provide that the first
- 19 \$1,000 in contributions made by, or on behalf of, an enrollee shall
- 20 be deposited into the capital preservation fund and the board may
- 21 provide for an account revocation period during which, if the
- 22 enrollee chooses to end participation in the program, the enrollee
- 23 may withdraw the deposited amounts from the capital preservation
- 24 fund without penalty; or
- 25 ²[(6)] (2) a life-cycle fund; or
- 26 (3)² any other ²investment² option deemed appropriate by the
- 27 board¹.
- 28 ²[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 b. The board shall designate by rule or regulation one of the
- 42 investment options as the default investment option for enrollees
- 43 who fail to elect an investment option and may, from time to time,
- 44 amend, modify or repeal such investment options as it deems
- 45 necessary or proper, and may subsequently select, by rule or
- 46 regulation, a different investment option as the default investment
- 47 option.²

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

9
10 13. a. Prior to the opening of the program for enrollment, the
11 board shall design and disseminate to all employers an employer
12 information packet and an employee information packet, which
13 shall include background information on the program, appropriate
14 disclosures for employees, and, if necessary, information regarding
15 the vendor Internet website described in subsection j. of section 14
16 of this act. ²The board shall establish and maintain an internet
17 website designed to make available to employers, employees, and
18 members of the general public the employee information packet, the
19 employer information packet, all reports provided pursuant to
20 subsection a. of section 18 of P.L. c., (C.)(pending before the
21 Legislature as this bill), and any other reports, documents or
22 information deemed appropriate by the board.²

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 14. ²~~Except as otherwise provided in section 21 of this act, the~~
10 The² program shall be implemented, and enrollment of employees
11 shall begin, within 24 months after the effective date of this act.
12 ²The board may extend the time period within which the program is
13 implemented and enrollment of employees begins, but not by more
14 than 12 months. The board shall implement the program in two
15 phases based on the size of the employers participating, as
16 measured by the number of employees per employer, with the
17 program implemented sooner for larger employers.² The following
18 provisions of this section shall be in force after the board opens the
19 program for enrollment:

20 a. Each employer shall establish a payroll deposit retirement
21 savings arrangement to allow each employee to participate in the
22 program not more than nine months after the board opens the
23 program for enrollment.

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

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

47 d. Enrollees may select an investment option from the
48 permitted investment options listed in section 11 of this act.

1 Enrollees may change their investment option ¹【no more than once
2 every calendar quarter, subject to the **】** in the manner specified by¹
3 rules and regulations promulgated by the board¹, which shall
4 include specifications regarding how frequently enrollees may
5 change their investment options¹. In the event that an enrollee fails
6 to select an investment option, that enrollee shall be placed in the
7 investment option selected by the board as the default under
8 subsection c. of section 11 of this act. If the board has not selected
9 a default investment option under subsection c. of section 11 of this
10 act, then an enrollee who fails to select an investment option shall
11 be placed in the life-cycle fund investment option.

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

16 f. (1) For any employee hired by an employer more than six
17 months after the board opens the program for enrollment, the
18 employer shall enroll the employee in the program no later than
19 three months following the date of hire of the employee, unless the
20 employee opts out of enrollment in the program prior to being
21 enrolled.

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

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

32 h. Employers shall retain the option at all times to set up ²or
33 provide coverage under² any type of employer-sponsored retirement
34 plan ²or to elect to offer coverage through a plan sponsored by an
35 employee leasing company or professional employer organization
36 with which that employer has an employee leasing agreement or
37 professional employer agreement as such terms are defined in
38 section 1 of P.L.2001, c.260 (C. 34:8-67)², such as a defined benefit
39 plan or a 401(k), Simplified Employee Pension (SEP) plan, or
40 Savings Incentive Match Plan for Employees (SIMPLE) plan, or to
41 offer an automatic enrollment payroll deduction IRA, instead of
42 having a payroll deposit retirement savings arrangement to allow
43 employee participation in the program.

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

46 j. The board may establish and maintain an Internet website
47 designed to assist employers in identifying private sector providers

1 of retirement arrangements that can be set up by the employer rather
2 than allowing employee participation in the program under this act.
3 The board shall provide public notice of the availability of and the
4 process for inclusion on the Internet website before it becomes
5 publicly available.

6 ²k. Each employer is responsible for the tasks described in
7 subsections a. and b. of this section, but the employer is permitted
8 to contract with a third party, such as a payroll service provider or a
9 professional employer organization, to perform those tasks on
10 behalf of the employer.²

11
12 15. Employee contributions deducted by the participating
13 employer through payroll deduction², less any amount withheld for
14 State income tax pursuant to regulations adopted by the board in
15 consultation with the department,² shall be paid by the participating
16 employer to the fund ²before the deadline established those
17 regulations,² using one or more payroll deposit retirement savings
18 arrangements established by the board under subsection i. of section
19 8 of this act ²[, either:

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

23 b. Before a later deadline prescribed by the board for making
24 the payments, but not later than the due date for the federal income
25 tax return deposit of tax required to be deducted and withheld
26 relating to collection of State income tax at source on wages for the
27 payroll period to which the payments relate ²].²

28
29 16. a. The State shall have no duty or liability to any party for
30 the payment of any retirement savings benefits accrued by any
31 individual under the program. Any financial liability for the
32 payment of retirement savings benefits in excess of funds available
33 under the program shall be borne solely by the entities with whom
34 the board contracts to provide insurance to protect the value of the
35 program.

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

41
42 ¹⁷² a. Participating employers shall not have any liability for
43 an employee's decision to participate in, or opt out of, the program
44 or for the investment decisions of the board or of any enrollee.

45 b. ¹The program is not an employer-sponsored plan and it is not
46 operated or administered by the employer.¹ A participating
47 employer shall not be a fiduciary, or considered to be a fiduciary,

1 over the program¹, and shall not be liable with regard to investment
2 returns, program design, and benefits paid to program participants¹.
3 A participating employer shall not bear responsibility for the
4 administration, investment, or investment performance of the
5 program¹, or for any required or permitted communications between
6 participating employees and program administrators¹. ¹**[A**
7 participating employer shall not be liable with regard to investment
8 returns, program design, and benefits paid to program participants.]
9 Nothing herein shall relieve employers from their responsibility for
10 enrolling employees and transmitting or arranging for transmission
11 of payroll deductions to the program in the manner required by
12 sections 14 and 15 of this act, distributing materials to employees in
13 the manner required by section 13 this act, establishing an open
14 enrollment period in the manner required by section 14 of this act,
15 or reporting information relevant to their compliance with this act in
16 the manner required by section 19 of this act.¹

17
18 18. a. The board shall annually submit ¹to the Governor and the
19 department, and to the Legislature pursuant to section 2 of
20 P.L.1991, c.164 (C.52:14-19.1)¹:

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

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

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

38 ¹The department shall make available to the public on its Internet
39 website all reports provided to the department pursuant to this
40 subsection.¹

41 b. In addition to any other statements or reports required by
42 law, the board shall provide periodic reports at least annually to
43 participating employers, reporting the names of each enrollee
44 employed by the participating employer and the amounts of
45 contributions made ²**[by]** through² the participating employer on
46 behalf of each employee ²pursuant to automatic payroll deductions

1 and contributions² during the reporting period, as well as to
2 enrollees, reporting contributions and investment income allocated
3 to, withdrawals from, and balances in their program accounts for
4 the reporting period. The reports may include any other
5 information regarding the program as the board determines is
6 appropriate.

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

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

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

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

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

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

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

46 d. A written protest against the proposed penalty shall be filed
47 with the department in a form prescribed by the department, setting
48 forth the grounds on which the protest is based. If a protest is filed

1 within 90 days after the date the notice of proposed penalty is
2 issued, the department shall reconsider the proposed penalty and
3 shall grant the employer a hearing. As soon as practicable after a
4 reconsideration and hearing of the protest filed by the employer, the
5 department shall issue a notice of decision to the employer, setting
6 forth the department's findings of fact and the basis of decision.
7 The decision of the department shall become final.

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

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

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

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

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

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

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

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

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

29 n. This section shall become operative nine months after the
30 board notifies the department that the program has been
31 implemented. Upon receipt of the notification from the board, the
32 department shall immediately post on its Internet website a notice
33 stating that this section is operative and the date that it is first
34 operative. This notice shall include a statement that, rather than
35 enrolling employees in the program under this act, employers may
36 sponsor ²or provide coverage under² an alternative arrangement,
37 including, but not limited to, a defined benefit plan, 401(k) plan, a
38 Simplified Employee Pension (SEP) plan, a Savings Incentive
39 Match Plan for Employees (SIMPLE) plan, ²a plan sponsored by an
40 employee leasing company or professional employer organization
41 with which the employer has an employee leasing agreement or
42 professional employer agreement as such terms are defined in
43 section 1 of P.L.2001, c.260 (C.34:8-67),² or an automatic payroll
44 deduction IRA offered through a private provider. The board shall
45 provide a link to the vendor Internet website described in subsection
46 j. of section 14 of this act.

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

5
6 ²[21. If the board does not obtain adequate funds to implement
7 the program within the time frame set forth under section 14 of this
8 act, the board may delay the implementation of the program.]²

9
10 ²[22.] 21.² ¹[The board shall request in writing an opinion or
11 ruling from the appropriate entity with jurisdiction over the federal
12 "Employee Retirement Income Security Act of 1974," 29 U.S.C.
13 s.1001 et seq. regarding the applicability of that act to the program.
14 The board shall not implement the program if the IRA arrangements
15 offered under the program fail to qualify for the favorable federal
16 income tax treatment ordinarily accorded to IRAs under the Internal
17 Revenue Code or if it is determined that the program is an employee
18 benefit plan and State or employer liability is established under the
19 "Employee Retirement Income Security Act of 1974," 29 U.S.C.
20 s.1001 et seq.] ²a.² If any clause, sentence, paragraph, section or
21 other part of the act shall be adjudged by any court of competent
22 jurisdiction to be invalid, including any judgment made pursuant to
23 R.S.1:1-10 that the part is unconstitutional, invalid, or inoperative,
24 the judgment shall not affect, impair or invalidate the remainder of
25 this act, but shall be confined in its operation to the clause,
26 sentence, paragraph, section or other part directly involved in the
27 controversy in which the judgment shall have been rendered.¹

28 ²b. Notwithstanding the provisions of any other law to the
29 contrary, the value of assets in an individual's account under the
30 program shall not be regarded as assets for the purposes of
31 determining eligibility for benefits or the amount of benefits to be
32 provided pursuant to any State or federal law, except that, if the
33 federal law expressly requires that the assets in the accounts be
34 regarded as assets for those purposes, the assets may be taken into
35 consideration when determining eligibility benefits or the amount of
36 benefits, provided further that if the federal law provides discretion
37 to the State in setting standards regarding the amount of assets
38 which may be disregarded in determining benefits, or other factors
39 regarding the assets which impact the eligibility for, or amount of,
40 benefits, the State shall, with respect to assets in the assets in the
41 accounts under the program, set standards which are as favorable as
42 the federal law permits for the individuals with the accounts.²

43
44 ²[23.] 22.² This act shall take effect immediately.