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District 15 (Hunterdon and Mercer)

Co-Sponsored by:
Senators Diegnan, Singer, Thompson, Brown, Greenstein, O'Scanlon and Rice

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 Labor Committee on December 3, 2018, with amendments.

(Sponsorship Updated As Of: 2/1/2019)
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
"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.

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:
Senate S.A committee amendments adopted December 3, 2018.
"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;
   (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 1. of this section
in order to implement the program shall not be repaid unless those
funds were offered contingent upon the promise of repayment;
7. Allocate administrative fees to individual retirement
accounts in the program on a pro rata basis;
8. Set minimum and maximum contribution levels in
accordance with limits established for IRAs by the Internal Revenue
Code;
9. Facilitate education and outreach to employers and
employees;
10. 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;
11. Carry out the duties and obligations of the program in an
effective, efficient, and low-cost manner;
12. 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
13. 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 six 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 six 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 six 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 six 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 manner specified by rules and regulations promulgated by the board, which shall include specifications regarding how frequently enrollees may change their investment options. 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 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 to the Governor, the board, and the department, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1)1:

(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 1[to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1)]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.

1The department shall make available to the public on its Internet website all reports provided to the department pursuant to this subsection. 1
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; and
   (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 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. If any clause, sentence, paragraph, section or other part of the act shall be adjudged by any court of competent jurisdiction to be invalid, including any judgement made pursuant to R.S.1:1-10 that the part is unconstitutional, invalid, or inoperative, the judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or other part directly involved in the controversy in which the judgment shall have been rendered.

23. This act shall take effect immediately.