

SENATE, No. 2831

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 16, 2015

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

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District 15 (Hunterdon and Mercer)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

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**Senators Whelan, Thompson, Singer, Cunningham, Vitale, P.Barnes, III,
Lesniak, Ruiz, B.Smith, Van Drew, Pennacchio, A.R.Bucco, Cruz-Perez,
Madden, Weinberg, Gordon and Greenstein**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/22/2015)

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 is employed by an employer, and whose wages are
16 subject to withholding as provided in the "New Jersey Gross
17 Income Tax Act," N.J.S.54A:1-1 et seq.

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

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

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

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

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

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

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

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

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

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

11

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

18

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

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

37

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

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

3

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

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

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

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

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

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

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

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

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

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

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

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

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

43

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

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

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

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

13

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

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

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

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

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

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

24 (5) ensures the portability of benefits; and

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

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

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

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

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

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

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

1 in order to implement the program shall not be repaid unless those
2 funds were offered contingent upon the promise of repayment;

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

5 p. Set minimum and maximum contribution levels in
6 accordance with limits established for IRAs by the Internal Revenue
7 Code;

8 q. Facilitate education and outreach to employers and
9 employees;

10 r. Facilitate compliance by the program with all applicable
11 requirements for the program under the Internal Revenue Code,
12 including tax qualification requirements or any other applicable law
13 and accounting requirements;

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

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

19 u. Deposit into the New Jersey Secure Choice Administrative
20 Fund all grants, gifts, donations, fees, and earnings from
21 investments from the New Jersey Secure Choice Savings Program
22 Fund that are used to recover administrative costs. All expenses of
23 the board shall be paid from the New Jersey Secure Choice
24 Administrative Fund.

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

39
40 10. a. Moneys in the fund shall be invested, or reinvested, as the
41 case may be, by the department. The department shall comply with
42 any and all applicable federal and State laws, rules, and regulations,
43 as well as any and all rules or regulations promulgated by the board
44 with respect to the program and the investment of the fund,
45 including, but not limited to, the investment policy.

46 b. The department shall provide reports as the board deems
47 necessary for the board to oversee the department's performance
48 and the performance of the fund.

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

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

9 (1) a conservative principal protection fund;

10 (2) a growth fund;

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

23 (4) an annuity fund.

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

34

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

43

44 13. a. Prior to the opening of the program for enrollment, the
45 board shall design and disseminate to all employers an employer
46 information packet and an employee information packet, which
47 shall include background information on the program, appropriate
48 disclosures for employees, and, if necessary, information regarding

1 the vendor Internet website described in subsection i. of section 14
2 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

35
36 14. Except as otherwise provided in section 21 of this act, the
37 program shall be implemented, and enrollment of employees shall
38 begin, within 24 months after the effective date of this act. The
39 following provisions of this section shall be in force after the board
40 opens the program for enrollment:

41 a. Each employer shall establish a payroll deposit retirement
42 savings arrangement to allow each employee to participate in the
43 program not more than nine months after the board opens the
44 program for enrollment.

45 b. Employers shall automatically enroll in the program each of
46 their employees who has not opted out of participation in the
47 program using the form described in subsection d. of section 13 of
48 this act and shall provide payroll deduction retirement savings

1 arrangements for their employees and, on behalf of the employees,
2 deposit these funds into the program. Small employers may, but are
3 not required to, provide payroll deduction retirement savings
4 arrangements for each employee who elects to participate in the
5 program.

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

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

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

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

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

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

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

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

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

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

22
23 16. a. The State shall have no duty or liability to any party for
24 the payment of any retirement savings benefits accrued by any
25 individual under the program. Any financial liability for the
26 payment of retirement savings benefits in excess of funds available
27 under the program shall be borne solely by the entities with whom
28 the board contracts to provide insurance to protect the value of the
29 program.

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

35
36 17. a. Participating employers shall not have any liability for an
37 employee's decision to participate in, or opt out of, the program or
38 for the investment decisions of the board or of any enrollee.

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

45
46 18. a. The board shall annually submit:

47 (1) an audited financial report, prepared in accordance with
48 generally accepted accounting principles, on the operations of the

1 program for each calendar year, to be submitted no later than July 1
2 of the following year to the Governor, and to the Legislature
3 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1); and

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

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

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

26

27 19. a. An employer who fails without reasonable cause to enroll
28 an employee in the program within the time prescribed under
29 section 14 of this act shall be subject to a penalty equal to:

30 (1) \$250 for each employee for each calendar year or portion of
31 a calendar year during which the employee neither was enrolled in
32 the program nor had elected out of participation in the program; or

33 (2) for each calendar year beginning after the date a penalty has
34 been assessed with respect to an employee, \$500 for any portion of
35 that calendar year during which such employee continues to be
36 unenrolled without electing out of participation in the program.

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

41 c. After a determination that an employer is subject to penalty
42 pursuant to this section, the department shall issue a notice of
43 proposed penalty to the employer. For purposes of subsection a. of
44 this section, the notice issued by the department to the employer
45 shall state the number of employees for which the penalty is
46 proposed under paragraph (1) of subsection a. of this section, or the
47 number of employees for which the penalty is proposed under
48 paragraph (2) of subsection a. of this section, or both, and the total

1 amount of penalties proposed. For purposes of subsection b. of this
2 section, the department shall issue a notice of proposed penalty to
3 the employer stating the total amount of penalties proposed under
4 subsection b. of this section. Upon the expiration of 90 days after
5 the date on which a notice of proposed penalty was issued, the
6 penalties specified therein shall be deemed assessed, unless the
7 employer had filed a protest with the department under subsection
8 d. of this section. If, within 90 days after the date on which the
9 notice of proposed penalty was issued, a protest is filed under
10 subsection d. of this section, the penalties specified in the notice
11 shall be deemed assessed when the decision of the department with
12 respect to the protest is final.

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

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

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

46 g. No notice of proposed assessment shall be issued with
47 respect to a calendar year after June 30 of the fourth subsequent

1 calendar year. No claim for refund may be filed more than one year
2 after the date of payment of the amount to be refunded.

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

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

11 j. The department shall require employers to report
12 information relevant to their compliance with this act on their State
13 income tax return and failure to provide the requested information
14 shall cause the return to be treated as unprocessable.

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

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

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

43 n. This section shall become operative nine months after the
44 board notifies the department that the program has been
45 implemented. Upon receipt of the notification from the board, the
46 department shall immediately post on its Internet website a notice
47 stating that this section is operative and the date that it is first
48 operative. This notice shall include a statement that, rather than

1 enrolling employees in the program under this act, employers may
2 sponsor an alternative arrangement, including, but not limited to, a
3 defined benefit plan, 401(k) plan, a Simplified Employee Pension
4 (SEP) plan, a Savings Incentive Match Plan for Employees
5 (SIMPLE) plan, or an automatic payroll deduction IRA offered
6 through a private provider. The board shall provide a link to the
7 vendor Internet website described in subsection i. of section 14 of
8 this act.

9
10 20. The board, in consultation with the department, shall adopt,
11 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
12 (C.52:14B-1 et seq.), any rules and regulations as may be necessary
13 for the implementation of this act.

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

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

30
31 23. This act shall take effect immediately.

32
33
34 STATEMENT

35
36 This bill establishes the "New Jersey Secure Choice Savings
37 Program" (program) to create a retirement savings program for
38 private sector workers in the form of an automatic enrollment
39 payroll deduction Individual Retirement Account (IRA). The
40 program will promote greater retirement savings for private sector
41 employees in a convenient, low cost, and portable manner. The bill
42 creates the New Jersey Secure Choice Savings Program Fund (fund)
43 which will consist of funds received from enrollees in the program
44 and participating employers.

45 The bill also creates the New Jersey Secure Choice Savings
46 Board (board) to implement the program and oversee the fund. The
47 board will consist of the following seven members: the State
48 Treasurer, or the State Treasurer's designee, who shall serve as

1 chair; the State Comptroller, or the State Comptroller's designee;
2 the Director of the Office of Management and Budget, or the
3 director's designee; two public representatives with expertise in
4 retirement savings plan administration or investment, or both, of
5 which one is appointed by the Speaker of the General Assembly and
6 one is appointed by the Senate President; a representative of
7 participating employers, appointed by the Governor; and a
8 representative of enrollees, appointed by the Governor. Members
9 of the board will serve without compensation. Each appointment to
10 the board by the Governor will be subject to the advice and consent
11 of the Senate.

12 The bill sets forth several duties of the board with respect to
13 designing and implementing the program, appointing a trustee to the
14 fund, governing risk management, determining investment options,
15 entering into contracts necessary for the administration of the
16 program and the fund, and employing a staff to support the
17 implementation of the program. The bill also requires the board to
18 establish a process for enrollment in the program, including the
19 process by which an employee can opt not to participate in the
20 program, select a contribution level, select an investment option,
21 and terminate participation in the program, as well as a process by
22 which an individual may voluntarily enroll in and make
23 contributions to the program.

24 The bill requires the board, prior to the opening of the program
25 for enrollment, to design and disseminate to all employers an
26 employer information packet and an employee information packet,
27 which must include background information on the program, and
28 appropriate disclosures for employees.

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

43 The bill defines "employer" as a person or entity engaged in a
44 business, industry, profession, trade, or other enterprise in New
45 Jersey, whether for profit or not for profit, that has at no time during
46 the previous calendar year employed fewer than 25 employees in
47 the State, has been in business at least two years, and has not
48 offered a qualified retirement plan, including, but not limited to, a

1 plan qualified under section 401(a), section 401(k), section 403(a),
2 section 403(b), section 408(k), section 408(p), or section 457(b) of
3 the Internal Revenue Code of 1986 in the preceding two years. The
4 term “employer” does not mean the State, its political subdivisions,
5 any office, department, division, bureau, board, commission or
6 agency of the State or of its political subdivisions, or any public
7 body in the State. The bill defines “small employer” as a person or
8 entity engaged in a business, industry, profession, trade, or other
9 enterprise in New Jersey, whether for profit or not for profit, that
10 employed less than 25 employees at any one time in the State
11 throughout the previous calendar year, or has been in business less
12 than two years, or both, but that notifies the Department of the
13 Treasury that it is interested in being a participating employer.

14 The bill provides that employees will have the ability to select a
15 contribution level into the fund. Employees may change their
16 contribution level at any time, subject to rules and regulations
17 promulgated by the board. If an employee fails to select a
18 contribution level, then the employee will contribute three percent
19 of the employee’s wages to the program. Employees may select an
20 investment option from the permitted investment options provided
21 by the board. Employees may change their investment option at
22 any time, subject to the rules and regulations promulgated by the
23 board. In the event that an employee fails to select an investment
24 option, that employee shall be placed in the investment option
25 selected by the board as the default investment option. Initially, the
26 life-cycle fund will be the default investment option. If the board
27 has not selected a different default investment option, then an
28 employee who fails to select an investment option will be placed in
29 the life-cycle fund investment option. Employees may terminate
30 their participation in the program at any time in a manner
31 prescribed by the board.

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

41 The bill provides that the State will have no duty or liability to
42 any party for the payment of any retirement savings benefits
43 accrued by any individual under the program. Any financial
44 liability for the payment of retirement savings benefits in excess of
45 funds available under the program shall be borne solely by the
46 entities with whom the board contracts to provide insurance to
47 protect the value of the program. No State entity, board,
48 commission, or agency, or any officer, employee, or member

1 thereof is liable for any loss or deficiency resulting from particular
2 investments selected under the bill, except for any liability that
3 arises out of a breach of fiduciary duty.

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

13 The bill provides that an employer who fails without reasonable
14 cause to enroll an employee in the program within the time
15 prescribed under provisions of the bill will be subject to a penalty
16 equal to \$250 for each employee for each calendar year or portion
17 of a calendar year during which the employee neither was enrolled
18 in the program nor had elected out of participation in the program;
19 or, for each calendar year beginning after the date a penalty has
20 been assessed with respect to an employee, \$500 for any portion of
21 that calendar year during which the employee continues to be
22 unenrolled without electing out of participation in the program. The
23 bill also provides that an employer who collects employee
24 contributions but fails to remit any portion of the contributions to
25 the fund shall be subject to a penalty of \$2,500 for a first offense,
26 and \$5,000 for the second and each subsequent offense.

27 Finally, the bill provides that if the board does not obtain
28 adequate funds to implement the program within the time frame set
29 forth by the bill, the board may delay the implementation of the
30 program. The board must request in writing an opinion or ruling
31 from the appropriate entity with jurisdiction over the federal
32 "Employee Retirement Income Security Act of 1974" (29 U.S.C.
33 s.1001 et seq.) regarding the applicability of that act to the program.
34 The board may not implement the program if the IRA arrangements
35 offered under the program fail to qualify for the favorable federal
36 income tax treatment ordinarily accorded to IRAs under the Internal
37 Revenue Code or if it is determined that the program is an employee
38 benefit plan and State or employer liability is established under the
39 "Employee Retirement Income Security Act of 1974."