

Title 43.
Subtitle 10.
Chapter 23.
(Rename)
Retirement Plans
§§ 1-21 –
C.43:23-13 to
43:23-33

P.L. 2019, CHAPTER 56, *approved March 28, 2019*
Assembly, No. 4134 (*Second Reprint*)

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

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 leasing company or professional employer organization with which
2 the employer has an employee leasing agreement or professional
3 employer agreement as such terms are defined in section 1 of
4 P.L.2001, c.260 (C. 34:8-67),²

5 in the preceding two years. "Employer" shall not mean the State,
6 its political subdivisions, any office, department, division, bureau,
7 board, commission or agency of the State or one of its political
8 subdivisions, or any public body in the State.

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

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

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

15 "IRA" means a standard Individual Retirement Account under
16 section 408, or a Roth Individual Retirement Account under section
17 408A, of the Internal Revenue Code.

18 "Participating employer" means an employer or small employer
19 that provides a payroll deposit retirement savings arrangement as
20 provided under this act for its employees who are enrollees in the
21 program.

22 "Payroll deposit retirement savings arrangement" means an
23 arrangement by which a participating employer allows enrollees to
24 remit payroll deduction contributions to the program.

25 "Program" means the New Jersey Secure Choice Savings
26 Program established pursuant to this act.

27 "Small employer" means a person or entity engaged in a
28 business, industry, profession, trade, or other enterprise in New
29 Jersey, whether for profit or not for profit, that employed less than
30 25 employees at any one time in the State throughout the previous
31 calendar year, or has been in business less than two years, or both,
32 but that notifies the board that it is interested in being a
33 participating employer.

34 "Wages" means any compensation within the meaning of section
35 219(f)(1) of the Internal Revenue Code that is received by an
36 enrollee from a participating employer ²or employee leasing
37 company or professional employer organization with which the
38 enrollee's employer has an employee leasing agreement or
39 professional employer agreement as such terms are defined in
40 section 1 of P.L.2001, c.260 (C. 34:8-67)² during the calendar year.

41

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

1 4. a. The New Jersey Secure Choice Savings Program Fund is
2 established as a special fund outside of the General Fund, separate
3 and apart from all public moneys or funds of this State, with the
4 board established pursuant to section 6 of this act as its trustee. The
5 fund shall include the individual retirement accounts of enrollees,
6 which shall be accounted for as individual accounts. Moneys in the
7 fund shall consist of moneys received from enrollees ²directly² and
8 ²through² participating employers pursuant to automatic payroll
9 deductions and contributions to savings made pursuant this act. The
10 fund shall be operated in a manner determined by the board,
11 provided that the fund is operated so that the accounts of enrollees
12 established under the program meet the requirements for IRAs
13 under the Internal Revenue Code.

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

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

35
36 6. There is established ²in, but not of, the Department of the
37 Treasury² the New Jersey Secure Choice Savings Board.

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

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

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

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

44 (4) two representatives of the general public with expertise in
45 retirement savings plan administration or investment, or both, of
46 which one representative shall be appointed ²the Governor upon the
47 recommendation of² by the Speaker of General Assembly and one

1 representative appointed by ²the Governor upon the
2 recommendation of² the Senate President¹, with both appointments
3 being made in consultation with organizations representing
4 business, including organizations representing businesses or
5 professionals in the securities and investment industries¹;

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

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

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

10 c. The initial terms of the appointees shall be as follows: the
11 public representative ²[appointed] recommended² by the Senate
12 President, for four years; the public representative ²[appointed]
13 recommended² by the Speaker of the General Assembly, for two
14 years; the representative of ²[participating employers] a business
15 trade organization², for three years; and the representative of
16 enrollees for one year. Thereafter, all of the appointees shall be for
17 terms of four years.

18 d. A vacancy in the term of an appointed board member shall
19 be filled for the balance of the unexpired term in the same manner
20 as the original appointment.

21 e. Each appointment by the Governor ²not appointed upon the
22 recommendation of the Senate President or the Speaker of the
23 General Assembly² shall be subject to the advice and consent of the
24 Senate. In case of a vacancy during a recess of the Senate, the
25 Governor shall make a temporary appointment until the next
26 meeting of the Senate, at which time the Governor shall appoint a
27 person to fill the office.

28 f. Each board member, prior to assuming office, shall take an
29 oath that the member will diligently and honestly administer the
30 affairs of the board and that the member will not knowingly violate
31 or willingly permit to be violated any of the provisions of law
32 applicable to the program. The oath shall be certified by the officer
33 before whom it is taken and immediately filed with the Secretary of
34 State.

35
36 7. The board, the individual members of the board, the trustee
37 appointed under subsection b. of section 8 of this act, any other
38 agents appointed or engaged by the board, and all persons serving
39 as program staff shall discharge their duties with respect to the
40 program solely in the interest of the program's enrollees and
41 beneficiaries as follows:

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

- 1 b. By using any contributions paid by employees ²directly² and
2 ²through participating² employers ²pursuant to automatic payroll
3 deductions and contributions² into the fund exclusively for the
4 purpose of paying benefits to the enrollees of the program, for the
5 cost of administration of the program, and for investments made for
6 the benefit of the program.
7
- 8 8. In addition to the other duties and responsibilities provided
9 in this act, the board shall:
- 10 a. Design, establish, and operate the program in a manner that:
- 11 (1) accords with best practices for retirement savings vehicles;
12 (2) maximizes participation, savings, and sound investment
13 practices;
14 (3) maximizes simplicity, including ease of administration for
15 participating employers and enrollees;
16 (4) provides an efficient product to enrollees by pooling
17 investment funds;
18 (5) ensures the portability of benefits; and
19 (6) provides for the deaccumulation of enrollee assets in a
20 manner that maximizes financial security in retirement;
- 21 b. Appoint a trustee to the fund in compliance with section 408
22 of the Internal Revenue Code;
- 23 c. Explore and establish investment options, subject to section
24 11 of this act, that offer employees returns on contributions and the
25 conversion of individual retirement savings account balances to
26 secure retirement income without incurring debt or liabilities to the
27 State;
- 28 d. Establish the process by which interest, investment earnings,
29 and investment losses are allocated to individual program accounts
30 on a pro rata basis and are computed at the interest rate on the
31 balance of an individual's account;
- 32 e. Make and enter into contracts necessary for the
33 administration of the program and the fund, including, but not
34 limited to, retaining and contracting with investment managers,
35 private financial institutions, other financial and service providers,
36 consultants, actuaries, counsel, auditors, third-party administrators,
37 and other professionals as necessary;
- 38 f. Conduct a review of the performance of any investment
39 vendors not less than once every two years, including, but not
40 limited to, a review of returns, fees, and customer service, and post
41 a copy of reviews conducted under this subsection to an Internet
42 website established and maintained by the board;
- 43 g. Determine the number and duties of staff members needed to
44 administer the program and employ a staff, including, as needed,
45 appointing a program administrator, and entering into contracts with
46 the State Treasurer to make employees of the department available
47 to administer the program;

- 1 h. Ensure that moneys in the fund be held and invested as
2 pooled investments described in section 11 of this act, with a view
3 to achieving cost savings through efficiencies and economies of
4 scale;
- 5 i. Evaluate and establish the process by which an enrollee is
6 able to contribute a portion of the enrollee's wages to the program
7 for automatic deposit of those contributions and the process by
8 which the participating employer provides a payroll deposit
9 retirement savings arrangement to forward those contributions and
10 related information to the program, including, but not limited to,
11 contracting with financial service companies and third-party
12 administrators with the capability to receive and process employee
13 information and contributions for payroll deposit retirement savings
14 arrangements or similar arrangements;
- 15 j. Design and establish the process for enrollment by an
16 employee pursuant to section 14 of this act, including the process
17 by which an employee can opt not to participate in the program,
18 select a contribution level, select an investment option, and
19 terminate participation in the program;
- 20 k. Evaluate and establish the process by which an individual
21 may voluntarily enroll in and make contributions to the program;
- 22 l. Accept any grants, appropriations, or other moneys from the
23 State, any unit of federal, State, or local government, or any other
24 person, firm, partnership, or corporation solely for deposit into the
25 fund, whether for investment or administrative purposes;
- 26 m. Evaluate the need for, and procure as needed, insurance
27 against any and all loss in connection with the property, assets, or
28 activities of the program, and indemnify as needed each member of
29 the board from personal loss or liability resulting from a member's
30 action or inaction as a member of the board;
- 31 n. Make provisions for the payment of administrative costs and
32 expenses for the creation, management, and operation of the
33 program, including the costs associated with subsections e., g., i.,
34 and m. of this section, subsection b. of section 11, subsection a. of
35 section 18, and subsection m. of section 19 of this act, and keep
36 annual administrative fees as low as possible, but in no event shall
37 annual administrative fees exceed 0.6 percent of the fund's total
38 balance¹, except that, during the first three years after the
39 establishment of the program annual administrative fees may be set
40 at not more than 0.75 percent of the fund's total balance¹.
41 "Administrative fees" shall include any investment fees incurred
42 pursuant to this section. Subject to appropriation, the State may pay
43 administrative costs associated with the creation and management
44 of the program until sufficient assets are available in the fund for
45 that purpose. Thereafter, all administrative costs of the fund,
46 including repayment of any funds provided by the State, shall be
47 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 employees², including the promotion of the benefits of retirement
10 savings and other information that promote financial literacy
11 necessary for sound financial decision-making²;
- 12 r. Facilitate compliance by the program with all applicable
13 requirements for the program under the Internal Revenue Code,
14 including tax qualification requirements or any other applicable law
15 and accounting requirements;
- 16 s. Carry out the duties and obligations of the program in an
17 effective, efficient, and low-cost manner;
- 18 t. Exercise any and all other powers reasonably necessary for
19 the effectuation of the purposes, objectives, and provisions of this
20 act pertaining to the program; and
- 21 u. Deposit into the New Jersey Secure Choice Administrative
22 Fund all grants, gifts, donations, fees, and earnings from
23 investments from the New Jersey Secure Choice Savings Program
24 Fund that are used to recover administrative costs. All expenses of
25 the board shall be paid from the New Jersey Secure Choice
26 Administrative Fund.
- 27
- 28 9. The board shall annually prepare and adopt a written
29 statement of investment policy that includes a risk management and
30 oversight program. This investment policy shall prohibit the board,
31 program, and fund from borrowing for investment purposes. The
32 risk management and oversight program shall be designed to ensure
33 that an effective risk management system is in place to monitor the
34 risk levels of the program and fund portfolio, to ensure that the risks
35 taken are prudent and properly managed, to provide an integrated
36 process for overall risk management, and to assess investment
37 returns as well as risk to determine if the risks taken are adequately
38 compensated compared to applicable performance benchmarks and
39 standards. The board shall consider the statement of investment
40 policy and any changes in the investment policy at a public hearing.
41
- 42 10. a. Moneys in the fund shall be invested, or reinvested, as the
43 case may be, by the department. The department shall comply with
44 any and all applicable federal and State laws, rules, and regulations,
45 as well as any and all rules or regulations promulgated by the board
46 with respect to the program and the investment of the fund,
47 including, but not limited to, the investment policy.

1 b. The department shall provide reports as the board deems
2 necessary for the board to oversee the department's performance
3 and the performance of the fund.
4

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

11 b. ²【The board may ²【also】² establish any or all of the following
12 ²【additional】² investment options:

13 (1) ²【a conservative principal protection fund;

14 (2) a growth fund;

15 (3) a secure return fund whose primary objective is the
16 preservation of the safety of principal and the provision of a stable
17 and low-risk rate of return. If the board elects to establish a secure
18 return fund, the board may procure any insurance, annuity, or other
19 product to insure the value of enrollees' accounts and guarantee a
20 rate of return. The cost of this funding mechanism shall be paid out
21 of the fund. Under no circumstances shall the board, program,
22 fund, the State, or any participating employer assume any liability
23 for investment or actuarial risk. The board shall determine whether
24 to establish such investment options based upon an analysis of their
25 cost, risk profile, benefit level, feasibility, and ease of
26 implementation; ² ¹【or】¹

27 ²【(4) an annuity fund¹;

28 (5) ² a capital preservation fund, which prioritizes the security
29 of the deposit over the rate of return. If the board elects to establish
30 a capital preservation fund, the board may provide that the first
31 \$1,000 in contributions made by, or on behalf of, an enrollee shall
32 be deposited into the capital preservation fund and the board may
33 provide for an account revocation period during which, if the
34 enrollee chooses to end participation in the program, the enrollee
35 may withdraw the deposited amounts from the capital preservation
36 fund without penalty; or

37 ²【(6)】 (2) a life-cycle fund; or

38 (3) ² any other ²investment² option deemed appropriate by the
39 board¹.

40 ²【c. If the board elects to establish a secure return fund, the
41 board shall then determine whether that option shall replace the
42 target date or life-cycle fund as the default investment option for
43 enrollees who do not elect an investment option. In making this
44 determination, the board shall consider the cost, risk profile, benefit
45 level, and ease of enrollment in the secure return fund. The board
46 may at any time thereafter replace the default investment option
47 and, based upon an analysis of these criteria, establish either the

1 secure return fund or the life-cycle fund as the default for enrollees
2 who do not elect an investment option.

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

6 b. The board shall designate by rule or regulation one of the
7 investment options as the default investment option for enrollees
8 who fail to elect an investment option and may, from time to time,
9 amend, modify or repeal such investment options as it deems
10 necessary or proper, and may subsequently select, by rule or
11 regulation, a different investment option as the default investment
12 option.²

13

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

22

23 13. a. Prior to the opening of the program for enrollment, the
24 board shall design and disseminate to all employers an employer
25 information packet and an employee information packet, which
26 shall include background information on the program, appropriate
27 disclosures for employees, and, if necessary, information regarding
28 the vendor Internet website described in subsection j. of section 14
29 of this act. ²The board shall establish and maintain an internet
30 website designed to make available to employers, employees, and
31 members of the general public the employee information packet, the
32 employer information packet, all reports provided pursuant to
33 subsection a. of section 18 of P.L. c., (C.)(pending before the
34 Legislature as this bill), and any other reports, documents or
35 information deemed appropriate by the board.²

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

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

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

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

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

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

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

- 1 (6) how to obtain additional information about the program;
- 2 (7) that employees seeking financial advice should contact
3 financial advisors, that participating employers are not in a position
4 to provide financial advice, and that participating employers are not
5 liable for decisions employees make pursuant to this act;
- 6 (8) that the program is not an employer-sponsored retirement
7 plan; and
- 8 (9) that the program fund is not guaranteed by the State.
- 9 d. The employee information packet shall also include a form
10 for an employee to note his or her decision to opt out of
11 participation in the program or elect to participate with a level of
12 employee contributions other than three percent.
- 13 e. Participating employers shall supply the employee
14 information packet to employees upon implementation of the
15 program. Participating employers shall supply the employee
16 information packet to new employees at the time of hiring, and new
17 employees may opt out of participation in the program or elect to
18 participate with a level of employee contributions other than three
19 percent at that time.
20
- 21 14. ²**【Except as otherwise provided in section 21 of this act, the】**
22 **The²** program shall be implemented, and enrollment of employees
23 shall begin, within 24 months after the effective date of this act.
24 ²The board may extend the time period within which the program is
25 implemented and enrollment of employees begins, but not by more
26 than 12 months. The board shall implement the program in two
27 phases based on the size of the employers participating, as
28 measured by the number of employees per employer, with the
29 program implemented sooner for larger employers.² The following
30 provisions of this section shall be in force after the board opens the
31 program for enrollment:
- 32 a. Each employer shall establish a payroll deposit retirement
33 savings arrangement to allow each employee to participate in the
34 program not more than nine months after the board opens the
35 program for enrollment.
- 36 b. Employers shall automatically enroll in the program each of
37 their employees who has not opted out of participation in the
38 program using the form described in subsection d. of section 13 of
39 this act and shall provide payroll deposit retirement savings
40 arrangements for their employees and, on behalf of the employees,
41 deposit these funds into the program. Small employers may, but are
42 not required to, provide payroll deposit retirement savings
43 arrangements for each employee who elects to participate in the
44 program.
- 45 c. Enrollees shall have the ability to select a contribution level
46 into the fund. This level may be expressed as a percentage of
47 wages or as a dollar amount up to the deductible amount for the
48 enrollee's taxable year under section 219(b)(1)(A) of the Internal

1 Revenue Code. Enrollees may change their contribution level no
2 more than once every calendar quarter, subject to rules and
3 regulations promulgated by the board. If an enrollee fails to select a
4 contribution level using the form described in subsection d. of
5 section 13 of this act, then the enrollee shall contribute three
6 percent of the enrollee's wages to the program, so long as the
7 contributions do not cause the enrollee's total contributions to IRAs
8 for the year to exceed the deductible amount for the enrollee's
9 taxable year under section 219(b)(1)(A) of the Internal Revenue
10 Code.

11 d. Enrollees may select an investment option from the
12 permitted investment options listed in section 11 of this act.
13 Enrollees may change their investment option ¹~~no more than once~~
14 ~~every calendar quarter, subject to the~~ in the manner specified by¹
15 rules and regulations promulgated by the board¹, which shall
16 include specifications regarding how frequently enrollees may
17 change their investment options¹. In the event that an enrollee fails
18 to select an investment option, that enrollee shall be placed in the
19 investment option selected by the board as the default under
20 subsection c. of section 11 of this act. If the board has not selected
21 a default investment option under subsection c. of section 11 of this
22 act, then an enrollee who fails to select an investment option shall
23 be placed in the life-cycle fund investment option.

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

28 f. (1) For any employee hired by an employer more than six
29 months after the board opens the program for enrollment, the
30 employer shall enroll the employee in the program no later than
31 three months following the date of hire of the employee, unless the
32 employee opts out of enrollment in the program prior to being
33 enrolled.

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

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

44 h. Employers shall retain the option at all times to set up ²or
45 provide coverage under² any type of employer-sponsored retirement
46 plan ²or to elect to offer coverage through a plan sponsored by an
47 employee leasing company or professional employer organization

1 with which that employer has an employee leasing agreement or
2 professional employer agreement as such terms are defined in
3 section 1 of P.L.2001, c.260 (C. 34:8-67)², such as a defined benefit
4 plan or a 401(k), Simplified Employee Pension (SEP) plan, or
5 Savings Incentive Match Plan for Employees (SIMPLE) plan, or to
6 offer an automatic enrollment payroll deduction IRA, instead of
7 having a payroll deposit retirement savings arrangement to allow
8 employee participation in the program.

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

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

18 ²k. Each employer is responsible for the tasks described in
19 subsections a. and b. of this section, but the employer is permitted
20 to contract with a third party, such as a payroll service provider or a
21 professional employer organization, to perform those tasks on
22 behalf of the employer.²

23
24 15. Employee contributions deducted by the participating
25 employer through payroll deduction², less any amount withheld for
26 State income tax pursuant to regulations adopted by the board in
27 consultation with the department,² shall be paid by the participating
28 employer to the fund ²before the deadline established those
29 regulations,² using one or more payroll deposit retirement savings
30 arrangements established by the board under subsection i. of section
31 8 of this act ²**], either:**

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

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

40
41 16. a. The State shall have no duty or liability to any party for
42 the payment of any retirement savings benefits accrued by any
43 individual under the program. Any financial liability for the
44 payment of retirement savings benefits in excess of funds available
45 under the program shall be borne solely by the entities with whom
46 the board contracts to provide insurance to protect the value of the
47 program.

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

6
7 17² 2 a. Participating employers shall not have any liability for
8 an employee's decision to participate in, or opt out of, the program
9 or for the investment decisions of the board or of any enrollee.

10 b. 1The program is not an employer-sponsored plan and it is not
11 operated or administered by the employer.¹ A participating
12 employer shall not be a fiduciary, or considered to be a fiduciary,
13 over the program¹, and shall not be liable with regard to investment
14 returns, program design, and benefits paid to program participants¹.
15 A participating employer shall not bear responsibility for the
16 administration, investment, or investment performance of the
17 program¹, or for any required or permitted communications between
18 participating employees and program administrators¹. ¹**[**A
19 participating employer shall not be liable with regard to investment
20 returns, program design, and benefits paid to program participants.**]**
21 Nothing herein shall relieve employers from their responsibility for
22 enrolling employees and transmitting or arranging for transmission
23 of payroll deductions to the program in the manner required by
24 sections 14 and 15 of this act, distributing materials to employees in
25 the manner required by section 13 this act, establishing an open
26 enrollment period in the manner required by section 14 of this act,
27 or reporting information relevant to their compliance with this act in
28 the manner required by section 19 of this act.¹

29
30 18. a. The board shall annually submit ¹to the Governor and the
31 department, and to the Legislature pursuant to section 2 of
32 P.L.1991, c.164 (C.52:14-19.1)¹:

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

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

45 The annual audit shall be made by an independent certified
46 public accountant and shall include, but is not limited to, direct and
47 indirect costs attributable to the use of outside consultants,

1 independent contractors, and any other persons who are not State
2 employees for the administration of the program.

3 ¹The department shall make available to the public on its Internet
4 website all reports provided to the department pursuant to this
5 subsection.¹

6 b. In addition to any other statements or reports required by
7 law, the board shall provide periodic reports at least annually to
8 participating employers, reporting the names of each enrollee
9 employed by the participating employer and the amounts of
10 contributions made ²**[by]** through² the participating employer on
11 behalf of each employee ²pursuant to automatic payroll deductions
12 and contributions² during the reporting period, as well as to
13 enrollees, reporting contributions and investment income allocated
14 to, withdrawals from, and balances in their program accounts for
15 the reporting period. The reports may include any other
16 information regarding the program as the board determines is
17 appropriate.

18

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

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

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

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

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

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

39 c. After a determination that an employer is subject to penalty
40 pursuant to this section, the department shall issue a notice of
41 proposed penalty to the employer. For purposes of subsection a. of
42 this section, the notice issued by the department to the employer
43 shall state the number of employees for which the penalty is
44 proposed under paragraph (3) or (4) of subsection a. of this section
45 and the total amount of penalties proposed. For purposes of
46 subsection b. of this section, the department shall issue a notice of
47 proposed penalty to the employer stating the total amount of

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

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

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

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

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

- 1 h. Whenever a notice is required by this section, it shall be
2 issued by first class mail addressed to the person concerned at the
3 person's last known address.
- 4 i. All books and records and other papers and documents
5 relevant to the determination of any penalty due under this section
6 shall, at all times during business hours of the day, be subject to
7 inspection by the department or the department's authorized
8 representatives.
- 9 j. The department shall require employers to report
10 information relevant to their compliance with this act on their State
11 income tax return. Failure to provide the compliance information
12 requested shall not cause the income tax return to be treated as
13 unprocessable for purposes of the applicable tax law.
- 14 k. For purposes of any provision of State law allowing the
15 department or any other agency of this State to offset an amount
16 owed to a taxpayer against a tax liability of that taxpayer or
17 allowing the department to offset an overpayment of tax against any
18 liability owed to the State, a penalty assessed under this section
19 shall be deemed to be a tax liability of the employer and any refund
20 due to an employer shall be deemed to be an overpayment of tax of
21 the employer.
- 22 l. Except as provided in this subsection, all information
23 received by the department from returns filed by an employer or
24 from any investigation conducted under the provisions of this act
25 shall be confidential, except for official purposes within the
26 department or pursuant to official procedures for collection of
27 penalties assessed under this act. No provision of this subsection
28 shall be construed as prohibiting the department from publishing or
29 making available to the public reasonable statistics concerning the
30 operation of this act wherein the contents of returns are grouped
31 into aggregates in such a way that the specific information of any
32 individual employer shall not be disclosed. No provision of this
33 subsection shall be construed as prohibiting the department from
34 divulging information to an authorized representative of the
35 employer or to any person pursuant to a request or authorization
36 made by the employer or by an authorized representative of the
37 employer.
- 38 m. The department may charge the board a reasonable fee for its
39 costs in performing its duties under this section to the extent that
40 those costs have not been recovered from penalties imposed under
41 this section.
- 42 n. This section shall become operative nine months after the
43 board notifies the department that the program has been
44 implemented. Upon receipt of the notification from the board, the
45 department shall immediately post on its Internet website a notice
46 stating that this section is operative and the date that it is first
47 operative. This notice shall include a statement that, rather than
48 enrolling employees in the program under this act, employers may

1 sponsor ²or provide coverage under² an alternative arrangement,
2 including, but not limited to, a defined benefit plan, 401(k) plan, a
3 Simplified Employee Pension (SEP) plan, a Savings Incentive
4 Match Plan for Employees (SIMPLE) plan, ²a plan sponsored by an
5 employee leasing company or professional employer organization
6 with which the employer has an employee leasing agreement or
7 professional employer agreement as such terms are defined in
8 section 1 of P.L.2001, c.260 (C.34:8-67),² or an automatic payroll
9 deduction IRA offered through a private provider. The board shall
10 provide a link to the vendor Internet website described in subsection
11 j. of section 14 of this act.

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

17
18 ²[21. If the board does not obtain adequate funds to implement
19 the program within the time frame set forth under section 14 of this
20 act, the board may delay the implementation of the program.]²

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

40 ²b. Notwithstanding the provisions of any other law to the
41 contrary, the value of assets in an individual's account under the
42 program shall not be regarded as assets for the purposes of
43 determining eligibility for benefits or the amount of benefits to be
44 provided pursuant to any State or federal law, except that, if the
45 federal law expressly requires that the assets in the accounts be
46 regarded as assets for those purposes, the assets may be taken into
47 consideration when determining eligibility benefits or the amount of

1 benefits, provided further that if the federal law provides discretion
2 to the State in setting standards regarding the amount of assets
3 which many be disregarded in determining benefits, or other factors
4 regarding the assets which impact the eligibility for, or amount of,
5 benefits, the State shall, with respect to assets in the assets in the
6 accounts under the program, set standards which are as favorable as
7 the federal law permits for the individuals with the accounts.²

8

9 ²[23.] 22.² This act shall take effect immediately.

10

11

12

13

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