

## CHAPTER 56

**AN ACT** concerning individual retirement savings for certain workers and supplementing Title 43 of the Revised Statutes.

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

C.43:23-13 Short title.

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

C.43:23-14 Definitions relative to certain retirement plans.

2. As used in this act:

"Board" means the New Jersey Secure Choice Savings Board established pursuant to this act.

"Department" means the Department of the Treasury.

"Employee" means any individual who is 18 years of age or older, who lives in this State or is employed by an employer in this State, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. For the purposes of this act, an employee who is co-employed by an employee leasing company or professional employer organization and a client company pursuant to an employee leasing agreement or professional employer agreement, as such terms are defined in section 1 of P.L.2001, c.260 (C.34:8-67), shall be treated as employed by the client company and not by the employee leasing company or professional employer organization.

"Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that has at no time during the previous calendar year employed fewer than 25 employees in the State, has been in business at least two years, and has not offered a qualified retirement plan, including, but not limited to, a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p), or section 457(b) of the Internal Revenue Code, or a plan sponsored by an employee leasing company or professional employer organization with which the employer has an employee leasing agreement or professional employer agreement as such terms are defined in section 1 of P.L.2001, c.260 (C. 34:8-67), in the preceding two years. “Employer” shall not mean the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or one of its political subdivisions, or any public body in the State.

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

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

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

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

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

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

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

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

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

C.43:23-15 New Jersey Secure Choice Savings Program.

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

C.43:23-16 Special fund outside of General Fund.

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

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

C.43:23-17 Nonappropriated separate and apart trust fund.

5. The New Jersey Secure Choice Administrative Fund is created as a nonappropriated separate and apart trust fund outside of the General Fund in the Department of the Treasury, to be used exclusively for the purpose of this act, P.L.2019, c.56 (C.43:23-13 et seq.). The board shall use moneys in the administrative fund to pay for administrative expenses it incurs in the performance of its duties under this act. The board shall use moneys in the administrative fund to cover startup administrative expenses it incurs in the performance of its duties under this act. The administrative fund may receive any grants or other moneys designated for administrative purposes from the State, or any unit of federal or local government, or any other person, firm, partnership, or corporation. Any interest earnings that are attributable to moneys in the administrative fund shall be deposited into the administrative fund.

C.43:23-18 New Jersey Secure Choice Savings Board.

6. There is established in, but not of, the Department of the Treasury the New Jersey Secure Choice Savings Board.

a. The board shall consist of the following members:

- (1) the State Treasurer, or the State Treasurer's designee, who shall serve as chair;
- (2) the State Comptroller, or the State Comptroller's designee;
- (3) the Director of the Office of Management and Budget, or the director's designee;

(4) two representatives of the general public with expertise in retirement savings plan administration or investment, or both, of which one representative shall be appointed by the Governor upon the recommendation of the Speaker of the General Assembly and one representative appointed by the Governor upon the recommendation of the Senate President, with both appointments being made in consultation with organizations representing business, including organizations representing businesses or professionals in the securities and investment industries;

(5) a representative of a business trade association, appointed by the Governor; and

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

b. Members of the board shall serve without compensation.

c. The initial terms of the appointees shall be as follows: the public representative recommended by the Senate President, for four years; the public representative recommended by the Speaker of the General Assembly, for two years; the representative of a business trade organization, for three years; and the representative of enrollees for one year. Thereafter, all of the appointees shall be for terms of four years.

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

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

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

C.43:23-19 Duties of board, trustee, agents.

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

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

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

C.43:23-20 Additional duties, responsibilities of board.

8. In addition to the other duties and responsibilities provided in this act, the board shall:
  - a. Design, establish, and operate the program in a manner that:
    - (1) accords with best practices for retirement savings vehicles;
    - (2) maximizes participation, savings, and sound investment practices;
    - (3) maximizes simplicity, including ease of administration for participating employers and enrollees;
    - (4) provides an efficient product to enrollees by pooling investment funds;
    - (5) ensures the portability of benefits; and
    - (6) provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement;
  - b. Appoint a trustee to the fund in compliance with section 408 of the Internal Revenue Code;
  - c. Explore and establish investment options, subject to section 11 of this act, that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the State;
  - d. Establish the process by which interest, investment earnings, and investment losses are allocated to individual program accounts on a pro rata basis and are computed at the interest rate on the balance of an individual's account;
  - e. Make and enter into contracts necessary for the administration of the program and the fund, including, but not limited to, retaining and contracting with investment managers, private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals as necessary;
  - f. Conduct a review of the performance of any investment vendors not less than once every two years, including, but not limited to, a review of returns, fees, and customer service, and post a copy of reviews conducted under this subsection to an Internet website established and maintained by the board;
  - g. Determine the number and duties of staff members needed to administer the program and employ a staff, including, as needed, appointing a program administrator, and entering into contracts with the State Treasurer to make employees of the department available to administer the program;
  - h. Ensure that moneys in the fund be held and invested as pooled investments described in section 11 of this act, with a view to achieving cost savings through efficiencies and economies of scale;
  - i. Evaluate and establish the process by which an enrollee is able to contribute a portion of the enrollee's wages to the program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the program, including, but not limited to, contracting with financial service companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or similar arrangements;
  - j. Design and establish the process for enrollment by an employee pursuant to section 14 of this act, including the process by which an employee can opt not to participate in the program, select a contribution level, select an investment option, and terminate participation in the program;
  - k. Evaluate and establish the process by which an individual may voluntarily enroll in and make contributions to the program;

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

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

n. Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the program, including the costs associated with subsections e., g., i., and m. of this section, subsection b. of section 11, subsection a. of section 18, and subsection m. of section 19 of this act, and keep annual administrative fees as low as possible, but in no event shall annual administrative fees exceed 0.6 percent of the fund's total balance, except that, during the first three years after the establishment of the program annual administrative fees may be set at not more than 0.75 percent of the fund's total balance. "Administrative fees" shall include any investment fees incurred pursuant to this section. Subject to appropriation, the State may pay administrative costs associated with the creation and management of the program until sufficient assets are available in the fund for that purpose. Thereafter, all administrative costs of the fund, including repayment of any funds provided by the State, shall be paid only out of moneys on deposit therein, except that, private funds or federal funding received under subsection l. of this section in order to implement the program shall not be repaid unless those funds were offered contingent upon the promise of repayment;

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

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

q. Facilitate education and outreach to employers and employees, including the promotion of the benefits of retirement savings and other information that promote financial literacy necessary for sound financial decision-making;

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

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

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

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

C.43:23-21 Annual statement of investment policy.

9. The board shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. This investment policy shall prohibit the board, program, and fund from borrowing for investment purposes. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the program and fund portfolio, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to

determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing.

C.43:23-22 Investment, reinvestment of moneys in the fund; reports.

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

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

C.43:23-23 Investment options.

11. a. The board may establish any or all of the following investment options:

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

(2) a life-cycle fund; or

(3) any other investment option deemed appropriate by the board.

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

C.43:23-24 Allocation of interest, investment earnings, and investment losses.

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

C.43:23-25 Information packets.

13. a. Prior to the opening of the program for enrollment, the board shall design and disseminate to all employers an employer information packet and an employee information packet, which shall include background information on the program, appropriate disclosures for employees, and, if necessary, information regarding the vendor Internet website described in subsection j. of section 14 of this act. The board shall establish and maintain an internet website designed to make available to employers, employees, and members of the general public the employee information packet, the employer information packet, all reports provided pursuant to subsection a. of section 18 of P.L.2019, c.56 (C.43:23-30), and any other reports, documents or information deemed appropriate by the board.

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

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

- (1) the benefits and risks associated with making contributions to the program;
- (2) the mechanics of how to make contributions to the program;
- (3) how to opt out of the program;
- (4) how to participate in the program with a level of employee contributions other than three percent;
- (5) the process for withdrawal of retirement savings;
- (6) how to obtain additional information about the program;
- (7) that employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to this act;
- (8) that the program is not an employer-sponsored retirement plan; and
- (9) that the program fund is not guaranteed by the State.

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

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

#### C.43:23-26 Implementation of program, enrollment of employees.

14. The program shall be implemented, and enrollment of employees shall begin, within 24 months after the effective date of this act. The board may extend the time period within which the program is implemented and enrollment of employees begins, but not by more than 12 months. The board shall implement the program in two phases based on the size of the employers participating, as measured by the number of employees per employer, with the program implemented sooner for larger employers. The following provisions of this section shall be in force after the board opens the program for enrollment:

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

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

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

deductible amount for the enrollee's taxable year under section 219(b)(1)(A) of the Internal Revenue Code.

d. Enrollees may select an investment option from the permitted investment options listed in section 11 of this act. Enrollees may change their investment option in the manner specified by rules and regulations promulgated by the board, which shall include specifications regarding how frequently enrollees may change their investment options. In the event that an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected by the board as the default under subsection c. of section 11 of this act. If the board has not selected a default investment option under subsection c. of section 11 of this act, then an enrollee who fails to select an investment option shall be placed in the life-cycle fund investment option.

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

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

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

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

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

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

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

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

C.43:23-27 Payments by employer to fund.

15. Employee contributions deducted by the participating employer through payroll deduction, less any amount withheld for State income tax pursuant to regulations adopted by the board in consultation with the department, shall be paid by the participating employer to the fund before the deadline established those regulations, using one or more payroll deposit retirement savings arrangements established by the board under subsection i. of section 8 of this act.

C.43:23-28 State has no duty, liability.

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

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

C.43:23-29 Immunity from liability for employers; responsibilities.

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

b. The program is not an employer-sponsored plan and it is not operated or administered by the employer. A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the program, and shall not be liable with regard to investment returns, program design, and benefits paid to program participants. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the program, or for any required or permitted communications between participating employees and program administrators. Nothing herein shall relieve employers from their responsibility for enrolling employees and transmitting or arranging for transmission of payroll deductions to the program in the manner required by sections 14 and 15 of this act, distributing materials to employees in the manner required by section 13 this act, establishing an open enrollment period in the manner required by section 14 of this act, or reporting information relevant to their compliance with this act in the manner required by section 19 of this act.

C.43:23-30 Annual reports.

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

(1) an audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program for each calendar year, to be submitted no later than July 1 of the following year; and

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

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

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

The department shall make available to the public on its Internet website all reports provided to the department pursuant to this subsection. b. In addition to any other statements or reports required by law, the board shall provide periodic reports at least annually to participating employers, reporting the names of each enrollee employed by the participating employer and the amounts of contributions made through the participating employer on behalf of each employee pursuant to automatic payroll deductions and contributions during the reporting period, as well as to enrollees, reporting contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. The reports may include any other information regarding the program as the board determines is appropriate.

C.43:23-31 Penalties for noncompliant employers.

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

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

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

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

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

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

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

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

the department shall issue a notice of decision to the employer, setting forth the department's findings of fact and the basis of decision. The decision of the department shall become final.

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

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

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

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

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

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

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

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

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

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

C.43:23-32 Rules, regulations.

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

C.43:23-33 Severability, assets not deemed assets for certain purposes.

21. a. If any clause, sentence, paragraph, section or other part of the act shall be adjudged by any court of competent jurisdiction to be invalid, including any judgment made pursuant to R.S.1:1-10 that the part is unconstitutional, invalid, or inoperative, the judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or other part directly involved in the controversy in which the judgment shall have been rendered.

b. Notwithstanding the provisions of any other law to the contrary, the value of assets in an individual’s account under the program shall not be regarded as assets for the purposes of determining eligibility for benefits or the amount of benefits to be provided pursuant to any State or federal law, except that, if the federal law expressly requires that the assets in the accounts be regarded as assets for those purposes, the assets may be taken into consideration when determining eligibility benefits or the amount of benefits, provided further that if the federal law provides discretion to the State in setting standards regarding the amount of assets which may be disregarded in determining benefits, or other factors regarding the assets which impact the eligibility for, or amount of, benefits, the State shall, with respect to assets in the accounts under the program, set standards which are as favorable as the federal law permits for the individuals with the accounts.

22. This act shall take effect immediately.

Approved March 28, 2019.