

[Second Reprint]

SENATE, No. 2891

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED AUGUST 27, 2018

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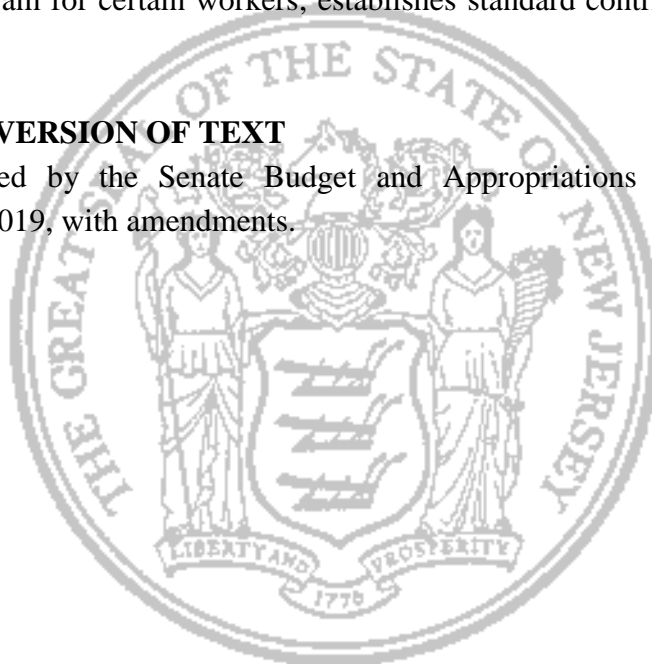
**Senators Diegnan, Singer, Thompson, Brown, Greenstein, O'Scanlon, Rice,
Cunningham and Ruiz**

SYNOPSIS

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

CURRENT VERSION OF TEXT

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



(Sponsorship Updated As Of: 2/22/2019)

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

3

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

6

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

9

10 REPLACE SECTION 2 TO READ:

11 2. As used in this act:

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

14 "Department" means the Department of the Treasury.

15 "Employee" means any individual who is 18 years of age or older,
16 who lives in this State or is employed by an employer in this State, and
17 whose wages are subject to withholding as provided in the "New
18 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. ²For the
19 purposes of this act, an employee who is co-employed by an employee
20 leasing company or professional employer organization and a client
21 company pursuant to an employee leasing agreement or professional
22 employer agreement, as such terms are defined in section 1 of
23 P.L.2001, c.260 (C.34:8-67), shall be treated as employed by the client
24 company and not by the employee leasing company or professional
25 employer organization.²

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted December 3, 2018.

²Senate SBA committee amendments adopted February 7, 2019.

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

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

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

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

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

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

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

29
30 3. A retirement savings program in the form of an automatic
31 enrollment payroll deduction IRA, known as the New Jersey Secure
32 Choice Savings Program, is hereby established and shall be
33 administered by the board for the purpose of promoting greater
34 retirement savings for private sector employees in a convenient, low
35 cost, and portable manner.

36
37 4. a. The New Jersey Secure Choice Savings Program Fund is
38 established as a special fund outside of the General Fund, separate and
39 apart from all public moneys or funds of this State, with the board
40 established pursuant to section 6 of this act as its trustee. The fund
41 shall include the individual retirement accounts of enrollees, which
42 shall be accounted for as individual accounts. Moneys in the fund
43 shall consist of moneys received from enrollees ²directly² and
44 ²through² participating employers pursuant to automatic payroll
45 deductions and contributions to savings made pursuant this act. The
46 fund shall be operated in a manner determined by the board, provided
47 that the fund is operated so that the accounts of enrollees established

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

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

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

23
24 6. There is established ²in, but not of, the Department of the
25 Treasury² the New Jersey Secure Choice Savings Board.

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

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

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

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

32 (4) two representatives of the general public with expertise in
33 retirement savings plan administration or investment, or both, of which
34 one representative shall be appointed by ²the Governor upon the
35 recommendation of² the Speaker of General Assembly and one
36 representative appointed by ²the Governor upon the recommendation
37 of² the Senate President², with both appointments being made in
38 consultation with organizations representing business, including
39 organizations representing businesses or professionals in the securities
40 and investment industries²;

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

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

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

45 c. The initial terms of the appointees shall be as follows: the
46 public representative ²[appointed] recommended² by the Senate
47 President, for four years; the public representative ²[appointed]

1 recommended² by the Speaker of the General Assembly, for two
2 years; the representative of ²【participating employers】 a business
3 trade association², for three years; and the representative of enrollees
4 for one year. Thereafter, all of the appointees shall be for terms of
5 four years.

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

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

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

21

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

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

31 b. By using any contributions paid by employees ²directly² and
32 ²through participating² employers ²pursuant to automatic payroll
33 deductions and contributions² into the fund exclusively for the purpose
34 of paying benefits to the enrollees of the program, for the cost of
35 administration of the program, and for investments made for the
36 benefit of the program.

37

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

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

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

42 (2) maximizes participation, savings, and sound investment
43 practices;

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

46 (4) provides an efficient product to enrollees by pooling
47 investment funds;

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

- 1 k. Evaluate and establish the process by which an individual may
2 voluntarily enroll in and make contributions to the program;
- 3 l. Accept any grants, appropriations, or other moneys from the
4 State, any unit of federal, State, or local government, or any other
5 person, firm, partnership, or corporation solely for deposit into the
6 fund, whether for investment or administrative purposes;
- 7 m. Evaluate the need for, and procure as needed, insurance against
8 any and all loss in connection with the property, assets, or activities of
9 the program, and indemnify as needed each member of the board from
10 personal loss or liability resulting from a member's action or inaction
11 as a member of the board;
- 12 n. Make provisions for the payment of administrative costs and
13 expenses for the creation, management, and operation of the program,
14 including the costs associated with subsections e., g., i., and m. of this
15 section, subsection b. of section 11, subsection a. of section 18, and
16 subsection m. of section 19 of this act, and keep annual administrative
17 fees as low as possible, but in no event shall annual administrative fees
18 exceed 0.6 percent of the fund's total balance², except that, during the
19 first three years after the establishment of the program annual
20 administrative fees may be set at not more than 0.75 percent of the
21 fund's total balance². "Administrative fees" shall include any
22 investment fees incurred pursuant to this section. Subject to
23 appropriation, the State may pay administrative costs associated with
24 the creation and management of the program until sufficient assets are
25 available in the fund for that purpose. Thereafter, all administrative
26 costs of the fund, including repayment of any funds provided by the
27 State, shall be paid only out of moneys on deposit therein, except that,
28 private funds or federal funding received under subsection l. of this
29 section in order to implement the program shall not be repaid unless
30 those funds were offered contingent upon the promise of repayment;
- 31 o. Allocate administrative fees to individual retirement accounts
32 in the program on a pro rata basis;
- 33 p. Set minimum and maximum contribution levels in accordance
34 with limits established for IRAs by the Internal Revenue Code;
- 35 q. Facilitate education and outreach to employers and
36 employees², including the promotion of the benefits of retirement
37 savings and other information that promote financial literacy necessary
38 for sound financial decision-making²;
- 39 r. Facilitate compliance by the program with all applicable
40 requirements for the program under the Internal Revenue Code,
41 including tax qualification requirements or any other applicable law
42 and accounting requirements;
- 43 s. Carry out the duties and obligations of the program in an
44 effective, efficient, and low-cost manner;
- 45 t. Exercise any and all other powers reasonably necessary for the
46 effectuation of the purposes, objectives, and provisions of this act
47 pertaining to the program; and

1 u. Deposit into the New Jersey Secure Choice Administrative
2 Fund all grants, gifts, donations, fees, and earnings from investments
3 from the New Jersey Secure Choice Savings Program Fund that are
4 used to recover administrative costs. All expenses of the board shall
5 be paid from the New Jersey Secure Choice Administrative Fund.
6

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

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

27 b. The department shall provide reports as the board deems
28 necessary for the board to oversee the department's performance
29 and the performance of the fund.
30

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

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

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

40 (2) a growth fund;

41 (3) a secure return fund whose primary objective is the
42 preservation of the safety of principal and the provision of a stable and
43 low-risk rate of return. If the board elects to establish a secure return
44 fund, the board may procure any insurance, annuity, or other product
45 to insure the value of enrollees' accounts and guarantee a rate of
46 return. The cost of this funding mechanism shall be paid out of the
47 fund. Under no circumstances shall the board, program, fund, the
48 State, or any participating employer assume any liability for

1 investment or actuarial risk. The board shall determine whether to
2 establish such investment options based upon an analysis of their cost,
3 risk profile, benefit level, feasibility, and ease of implementation; or

4 (4) an annuity fund.

5 c. If the board elects to establish a secure return fund, the board
6 shall then determine whether that option shall replace the target date or
7 life-cycle fund as the default investment option for enrollees who do
8 not elect an investment option. In making this determination, the
9 board shall consider the cost, risk profile, benefit level, and ease of
10 enrollment in the secure return fund. The board may at any time
11 thereafter replace the default investment option and, based upon an
12 analysis of these criteria, establish either the secure return fund or the
13 life-cycle fund as the default for enrollees who do not elect an
14 investment option.

15 d. Notwithstanding any other provision of this section, the board
16 shall not offer more than five investment options in any given calendar
17 year. a capital preservation fund, which prioritizes the security of the
18 deposit over the rate of return. If the board elects to establish a capital
19 preservation fund, the board may provide that the first \$1,000 in
20 contributions made by, or on behalf of, an enrollee shall be deposited
21 into the capital preservation fund and the board may provide for an
22 account revocation period during which, if the enrollee chooses to end
23 participation in the program, the enrollee may withdraw the deposited
24 amounts from the capital preservation fund without penalty; or

25 (2) a life-cycle fund; or

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

27 b. The board shall designate by rule or regulation one of the
28 investment options as the default investment option for enrollees who
29 fail to elect an investment option and may, from time to time, amend,
30 modify or repeal such investment options as it deems necessary or
31 proper, and may subsequently select, by rule or regulation, a different
32 investment option as the default investment option.²

33

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

42

43 13. a. Prior to the opening of the program for enrollment, the
44 board shall design and disseminate to all employers an employer
45 information packet and an employee information packet, which shall
46 include background information on the program, appropriate
47 disclosures for employees, and, if necessary, information regarding the
48 vendor Internet website described in subsection j. of section 14 of this

1 act. ²The board shall establish and maintain an internet website
2 designed to make available to employers, employees, and members of
3 the general public the employee information packet, the employer
4 information packet, all reports provided pursuant to subsection a. of
5 section 18 of P.L. c., (C.)(pending before the Legislature as this
6 bill), and any other reports, documents or information deemed
7 appropriate by the board.²

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

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

14 (1) the benefits and risks associated with making contributions to
15 the program;

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

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

18 (4) how to participate in the program with a level of employee
19 contributions other than ¹~~six~~ three¹ percent;

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

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

22 (7) that employees seeking financial advice should contact
23 financial advisors, that participating employers are not in a position to
24 provide financial advice, and that participating employers are not
25 liable for decisions employees make pursuant to this act;

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

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

29 d. The employee information packet shall also include a form for
30 an employee to note his or her decision to opt out of participation in
31 the program or elect to participate with a level of employee
32 contributions other than ¹~~six~~ three¹ percent.

33 e. Participating employers shall supply the employee information
34 packet to employees upon implementation of the program.
35 Participating employers shall supply the employee information packet
36 to new employees at the time of hiring, and new employees may opt
37 out of participation in the program or elect to participate with a level
38 of employee contributions other than ¹~~six~~ three¹ percent at that time.

39

40 14. ²~~Except as otherwise provided in section 21 of this act, the~~
41 ~~The~~² program shall be implemented, and enrollment of employees
42 shall begin, within 24 months after the effective date of this act. ²The
43 board may extend the time period within which the program is
44 implemented and enrollment of employees begins, but not by more
45 than 12 months. The board shall implement the program in two phases
46 based on the size of the employers participating, as measured by the
47 number of employees per employer, with the program implemented

- 1 sooner for larger employers.² The following provisions of this section
2 shall be in force after the board opens the program for enrollment:
- 3 a. Each employer shall establish a payroll deposit retirement
4 savings arrangement to allow each employee to participate in the
5 program not more than nine months after the board opens the program
6 for enrollment.
- 7 b. Employers shall automatically enroll in the program each of
8 their employees who has not opted out of participation in the program
9 using the form described in subsection d. of section 13 of this act and
10 shall provide payroll deposit retirement savings arrangements for their
11 employees and, on behalf of the employees, deposit these funds into
12 the program. Small employers may, but are not required to, provide
13 payroll deposit retirement savings arrangements for each employee
14 who elects to participate in the program.
- 15 c. Enrollees shall have the ability to select a contribution level
16 into the fund. This level may be expressed as a percentage of wages or
17 as a dollar amount up to the deductible amount for the enrollee's
18 taxable year under section 219(b)(1)(A) of the Internal Revenue Code.
19 Enrollees may change their contribution level no more than once every
20 calendar quarter, subject to rules and regulations promulgated by the
21 board. If an enrollee fails to select a contribution level using the form
22 described in subsection, d. of section 13 of this act, then the enrollee
23 shall contribute ¹~~【six】~~ three¹ percent of the enrollee's wages to the
24 program, so long as the contributions do not cause the enrollee's total
25 contributions to IRAs for the year to exceed the deductible amount for
26 the enrollee's taxable year under section 219(b)(1)(A) of the Internal
27 Revenue Code.
- 28 d. Enrollees may select an investment option from the permitted
29 investment options listed in section 11 of this act. Enrollees may
30 change their investment option ¹~~【no more than once every calendar~~
31 ~~quarter, subject to the】~~ in the manner specified by¹ rules and
32 regulations promulgated by the board¹, which shall include
33 specifications regarding how frequently enrollees may change their
34 investment options¹. In the event that an enrollee fails to select an
35 investment option, that enrollee shall be placed in the investment
36 option selected by the board as the default under subsection c. of
37 section 11 of this act. If the board has not selected a default
38 investment option under subsection c. of section 11 of this act, then an
39 enrollee who fails to select an investment option shall be placed in the
40 life-cycle fund investment option.
- 41 e. Following initial implementation of the program pursuant to
42 this section, at least once every year, participating employers shall
43 designate an open enrollment period during which employees who
44 previously opted out of the program may enroll in the program.
- 45 f. (1) For any employee hired by an employer more than six
46 months after the board opens the program for enrollment, the employer
47 shall enroll the employee in the program no later than three months

1 following the date of hire of the employee, unless the employee opts
2 out of enrollment in the program prior to being enrolled.

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

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

13 h. Employers shall retain the option at all times to set up ²or
14 provide coverage under² any type of employer-sponsored retirement
15 plan ²or to elect to offer coverage through a plan sponsored by an
16 employee leasing company or professional employer organization with
17 which that employer has an employee leasing agreement or
18 professional employer agreement as such terms are defined in section
19 1 of P.L.2001, c.260 (C. 34:8-67)², such as a defined benefit plan or a
20 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive
21 Match Plan for Employees (SIMPLE) plan, or to offer an automatic
22 enrollment payroll deduction IRA, instead of having a payroll deposit
23 retirement savings arrangement to allow employee participation in the
24 program.

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

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

34 ²k. Each employer is responsible for the tasks described in
35 subsections a. and b. of this section, but the employer is permitted to
36 contract with a third party, such as a payroll service provider or a
37 professional employer organization, to perform those tasks on behalf
38 of the employer.²

39
40 15. Employee contributions deducted by the participating
41 employer through payroll deduction², less any amount withheld for
42 State income tax pursuant to regulations adopted by the board in
43 consultation with the department,² shall be paid by the participating
44 employer to the fund ²before the deadline established those
45 regulations.² using one or more payroll deposit retirement savings
46 arrangements established by the board under subsection i. of section 8
47 of this act²], either:

1 a. On or before the last day of the month following the month in
2 which the compensation otherwise would have been payable to the
3 employee; or

4 b. Before a later deadline prescribed by the board for making the
5 payments, but not later than the due date for the federal income tax
6 return deposit of tax required to be deducted and withheld relating to
7 collection of State income tax at source on wages for the payroll
8 period to which the payments relate².

9
10 16. a. The State shall have no duty or liability to any party for
11 the payment of any retirement savings benefits accrued by any
12 individual under the program. Any financial liability for the
13 payment of retirement savings benefits in excess of funds available
14 under the program shall be borne solely by the entities with whom
15 the board contracts to provide insurance to protect the value of the
16 program.

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

22
23 17. a. Participating employers shall not have any liability for an
24 employee's decision to participate in, or opt out of, the program or for
25 the investment decisions of the board or of any enrollee.

26 b. ²The program is not an employer-sponsored plan and it is not
27 operated or administered by the employer.² A participating employer
28 shall not be a fiduciary, or considered to be a fiduciary, over the
29 program², and shall not be liable with regard to investment returns,
30 program design, and benefits paid to program participants². A
31 participating employer shall not bear responsibility for the
32 administration, investment, or investment performance of the
33 program², or for any required or permitted communications between
34 participating employees and program administrators². ²[A
35 participating employer shall not be liable with regard to investment
36 returns, program design, and benefits paid to program participants.]
37 Nothing herein shall relieve employers from their responsibility for
38 enrolling employees and transmitting or arranging for transmission of
39 payroll deductions to the program in the manner required by sections
40 14 and 15 of this act, distributing materials to employees in the manner
41 required by section 13 this act, establishing an open enrollment period
42 in the manner required by section 14 of this act, or reporting
43 information relevant to their compliance with this act in the manner
44 required by section 19 of this act.²

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

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

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

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

21 ¹The department shall make available to the public on its Internet
22 website all reports provided to the department pursuant to this
23 subsection.¹

24 b. In addition to any other statements or reports required by law,
25 the board shall provide periodic reports at least annually to
26 participating employers, reporting the names of each enrollee
27 employed by the participating employer and the amounts of
28 contributions made ²by through² the participating employer on
29 behalf of each employee ²pursuant to automatic payroll deductions and
30 contributions² during the reporting period, as well as to enrollees,
31 reporting contributions and investment income allocated to,
32 withdrawals from, and balances in their program accounts for the
33 reporting period. The reports may include any other information
34 regarding the program as the board determines is appropriate.
35

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

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

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

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

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

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

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

25 d. A written protest against the proposed penalty shall be filed
26 with the department in a form prescribed by the department, setting
27 forth the grounds on which the protest is based. If a protest is filed
28 within 90 days after the date the notice of proposed penalty is issued,
29 the department shall reconsider the proposed penalty and shall grant
30 the employer a hearing. As soon as practicable after a reconsideration
31 and hearing of the protest filed by the employer, the department shall
32 issue a notice of decision to the employer, setting forth the
33 department's findings of fact and the basis of decision. The decision of
34 the department shall become final.

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

41 f. An employer who has overpaid a penalty assessed under this
42 section may file a claim for refund with the department. A claim shall
43 be in writing in a form prescribed by the department and shall state the
44 specific grounds upon which it is founded. As soon as practicable
45 after a claim for refund is filed, the department shall examine it and
46 either issue a refund or issue a notice of denial. If a protest is filed, the
47 department shall reconsider the denial and grant the employer a
48 hearing. As soon as practicable after the reconsideration and hearing,

1 the department shall issue a notice of decision to the employer. The
2 notice shall set forth briefly the department's findings of fact and the
3 basis of decision in each case decided in whole or in part adversely to
4 the employer. A denial of a claim for refund shall be final 90 days
5 after the date of issuance of the notice of the denial, except for those
6 amounts denied as to which the employer has filed a protest with the
7 department. If a protest has been timely filed, the decision of the
8 department shall become final.

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

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

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

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

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

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

47 m. The department may charge the board a reasonable fee for its
48 costs in performing its duties under this section to the extent that those

1 costs have not been recovered from penalties imposed under this
2 section.

3 n. This section shall become operative nine months after the
4 board notifies the department that the program has been implemented.
5 Upon receipt of the notification from the board, the department shall
6 immediately post on its Internet website a notice stating that this
7 section is operative and the date that it is first operative. This notice
8 shall include a statement that, rather than enrolling employees in the
9 program under this act, employers may sponsor ²or provide coverage
10 under² an alternative arrangement, including, but not limited to, a
11 defined benefit plan, 401(k) plan, a Simplified Employee Pension
12 (SEP) plan, a Savings Incentive Match Plan for Employees (SIMPLE)
13 plan, ²a plan sponsored by an employee leasing company or
14 professional employer organization with which the employer has an
15 employee leasing agreement or professional employer agreement as
16 such terms are defined in section 1 of P.L.2001, c.260 (C.34:8-67),² or
17 an automatic payroll deduction IRA offered through a private provider.
18 The board shall provide a link to the vendor Internet website described
19 in subsection j. of section 14 of this act.

20

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

25

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

29

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

1 ²b. Notwithstanding the provisions of any other law to the
2 contrary, the value of assets in an individual's account under the
3 program shall not be regarded as assets for the purposes of
4 determining eligibility for benefits or the amount of benefits to be
5 provided pursuant to any State or federal law, except that, if the federal
6 law expressly requires that the assets in the accounts be regarded as
7 assets for those purposes, the assets may be taken into consideration
8 when determining eligibility benefits or the amount of benefits,
9 provided further that if the federal law provides discretion to the State
10 in setting standards regarding the amount of assets which may be
11 disregarded in determining benefits, or other factors regarding the
12 assets which impact the eligibility for, or amount of, benefits, the State
13 shall, with respect to assets in the assets in the accounts under the
14 program, set standards which are as favorable as the federal law
15 permits for the individuals with the accounts.²

16

17 ²[23.] 22.² This act shall take effect immediately.