

§173. Duties of board; requirements of program

1. Duties. In carrying out the purposes of this chapter, the board shall:

A. Develop, establish, implement and maintain the program and, to that end, may conduct market, legal and feasibility analyses if the board considers them advisable and may determine a name for the program; [PL 2023, c. 167, §3 (AMD).]

B. Adopt rules the board considers necessary or advisable for the implementation and general administration and operation of the program as provided in section 174, consistent with the Internal Revenue Code and regulations under that Code, including to ensure that the program satisfies all criteria for favorable federal tax treatment and complies, to the extent necessary, with any other applicable federal or state law; [PL 2021, c. 356, §1 (NEW).]

C. Use private sector partnerships to contract with a program administrator to administer the program and manage the investments under the supervision and guidance of the board in accordance with this chapter; [PL 2021, c. 356, §1 (NEW).]

D. Cause funds to be held and invested and reinvested under the program; [PL 2021, c. 356, §1 (NEW).]

E. Develop and implement an investment policy that defines the program's investment objectives consistent with the objectives of the program and that provides for policies and procedures consistent with those investment objectives. The board shall strive to select and offer investment options available to participants and other program features that are intended to achieve maximum possible income replacement balanced with an appropriate level of risk in an IRA-based environment consistent with the investment objectives under the policy. The investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk in view of the investment objectives under the policy. The menu of investment options must be determined by considering the nature and objectives of the program, the desirability of limiting investment options under the program to a reasonable number and the extensive investment options available to participants in the event that they roll over funds in an IRA established under the program to an IRA outside the program. In accordance with paragraphs K and O, the board, in carrying out its responsibilities and exercising its powers under this chapter, shall employ or retain appropriate entities or personnel to assist or advise it and to whom to delegate the carrying out of such responsibilities and exercise of such powers; [PL 2023, c. 167, §4 (AMD).]

F. Arrange for collective, common and pooled investment of assets of the program and enterprise fund, including investments in conjunction with other funds with which these assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale; [PL 2021, c. 356, §1 (NEW).]

G. Cause the program, enterprise fund and arrangements and accounts established under the program to be designed, established and operated:

- (1) In accordance with best practices for retirement savings accounts;
- (2) To encourage participation and saving and to make it simple, easy and convenient for participants to contribute and manage their savings;
- (3) To promote sound investment practices and appropriate investment menus and default investments;
- (4) To maximize simplicity and ease of administration for covered employers;
- (5) To minimize costs, including by collective investment and economies of scale;
- (6) To promote portability of benefits; and

- (7) To avoid preemption of the program by federal law; [PL 2021, c. 356, §1 (NEW).]
- H. Educate participants and potential participants on the benefits of planning and saving for retirement, help them decide the level of participation and saving strategies that may be appropriate for them and help them develop greater financial capability and financial literacy, including through partnerships with organizations based in the State specializing in financial literacy education; [PL 2021, c. 356, §1 (NEW).]
- I. In accordance with rules adopted by the board, determine the eligibility of an employer, employee or other individual to participate in the program, including conditions under which an employer that terminates the offering of a specified tax-favored retirement plan can become a covered employer eligible to participate in the program; [PL 2021, c. 356, §1 (NEW).]
- J. Arrange for and facilitate compliance by the program or arrangements established under the program with all requirements applicable to the program under the Internal Revenue Code, including requirements for favorable tax treatment of the IRAs, and any other applicable federal or state law or accounting requirements, including using its best efforts to implement procedures minimizing the risk that covered employees will exceed the limits on tax-favored IRA contributions that they are eligible to make and otherwise providing or arranging for assistance to covered employers and covered employees in complying with applicable law and tax-related requirements in a cost-effective manner. The board may establish any processes it reasonably considers to be necessary or advisable to verify whether an employer is a covered employer, including reference to online data and possible use of questions in employer state tax filings, consistent with the objective of avoiding to the fullest extent practicable any need to require employers that are not covered employers to register with the program or take other action to demonstrate that they maintain specified tax-favored retirement plans or are exempt for other reasons from being treated as covered employers; [PL 2021, c. 356, §1 (NEW).]
- K. Employ or otherwise retain a program administrator, an executive director, staff, a trustee, a record keeper, investment managers, investment advisors, other administrative, professional and expert advisors and service providers, none of whom may be members of the board and all of whom serve at the pleasure of the board, and the board shall determine their duties and compensation. The board may authorize the executive director employed by the board to enter into contracts, as described in paragraph O, on behalf of the board or conduct any business necessary for the efficient operation of the board; [PL 2021, c. 356, §1 (NEW).]
- L. Discharge its duties and ensure that the members of the board discharge their duties with respect to the program solely in the interest of the participants as follows:
- (1) For the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the program; and
 - (2) With the care, skill, prudence and diligence under the circumstances then prevailing that persons of prudence, discretion and intelligence, acting in a like capacity and familiar with those matters, would use in the conduct of an enterprise of a like character and with like aims; [PL 2021, c. 356, §1 (NEW).]
- M. Make provision for costs and expenses incurred to initiate, implement, maintain, manage and administer the program and its investments to be paid or defrayed from investment returns or assets of the program or from the charging and collection of other fees, charges or funds, whether account-based, asset-based, per capita or otherwise, by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law; [PL 2021, c. 356, §1 (NEW).]
- N. Accept any grants, gifts, legislative appropriation, loans and other funds from the State, any unit of federal, state or local government or any other person, firm or entity to defray the costs of

administering and operating the program in accordance with the requirements of section 178, subsection 1; [PL 2021, c. 356, §1 (NEW).]

O. Make and enter into contracts, agreements or arrangements for and collaborate and cooperate with and retain, employ and contract with or for any of the following to the extent the board considers necessary or advisable for the effective and efficient design, implementation and administration of the program consistent with the purposes set forth in this chapter and to maximize outreach to covered employers and covered employees:

(1) Services of private and public financial institutions, depositories, consultants, actuaries, counsel, auditors, investment advisors, investment administrators, investment management firms, other investment firms, 3rd-party administrators, other professionals and service providers, the retirement system, the Office of the Treasurer of State, other state treasurers and other state public retirement systems;

(2) Research, technical, financial, administrative and other services;

(3) Services of other state agencies and instrumentalities, including without limitation those with responsibilities for tax collection, budget, finance, labor and employment regulation, consumer protection, business regulation and liaison, benefits and public assistance, to assist the board in the exercise of its powers and duties, and all such agencies and instrumentalities shall provide such assistance at the board's request; or

(4) Services to develop and implement outreach efforts to gain input and disseminate information regarding the program and retirement saving in general, including timely information to covered employers regarding the program and how it applies to them, with special emphasis on their ability at any time to sponsor a specified tax-favored retirement plan that would exempt them from any responsibilities under the program; [PL 2021, c. 356, §1 (NEW).]

P. Ensure that all contributions to an IRA under the program are used only to pay benefits to participants under the program, pay the cost of administering the program or make investments for the benefit of the program and that no assets of the program or enterprise fund are transferred to the General Fund or to any other fund of the State or are otherwise encumbered or used for any other purpose; [PL 2021, c. 356, §1 (NEW).]

Q. Consider whether procedures should be adopted to allow employers that are not covered employers because they are exempt from covered employer status to voluntarily participate in the program by automatically enrolling their employees, considering, among other factors, the potential legal consequences and the degree of employer demand to participate or facilitate participation by employees; [PL 2021, c. 356, §1 (NEW).]

R. Evaluate the need for, and procure if and as considered necessary, insurance against any loss in connection with the property, assets or activities of the program, including, if and as considered necessary, pooled private insurance; [PL 2021, c. 356, §1 (NEW).]

S. Indemnify, including procurement of insurance if and as needed for this purpose, each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board; [PL 2021, c. 356, §1 (NEW).]

T. Collaborate with, and evaluate the role of, financial advisors or other financial professionals, including in assisting and providing guidance for covered employees; [PL 2021, c. 356, §1 (NEW).]

U. Along with its members, the program administrator and other staff of the board, comply with any applicable state ethics and gift laws, procurement codes and restrictions and restrictions on honoraria and may not:

- (1) Directly or indirectly have any interest in the making of any investment under the program or in gains or profits accruing from any such investment;
- (2) Borrow any program-related funds or deposits, or use any such funds or deposits in any manner, for the benefit of the board or any member or as an agent or partner of others; or
- (3) Become an endorser, surety or obligor on investments made under the program; and [PL 2021, c. 356, §1 (NEW).]

V. Carry out its powers and duties under the program pursuant to this chapter and exercise any other powers as are appropriate for the effectuation of the purposes, objectives and provisions of this chapter pertaining to the program. [PL 2021, c. 356, §1 (NEW).]
[PL 2023, c. 167, §§3, 4 (AMD).]

2. Required elements of program. In accordance with the implementation schedule set forth in subsection 3, the program must:

A. Allow an eligible individual in this State to choose whether or not to contribute to an IRA under the program, including allowing a covered employee in the State the choice to contribute to an IRA under the program through a payroll deduction IRA arrangement; [PL 2021, c. 356, §1 (NEW).]

B. Notwithstanding any provision of state law related to payroll deduction to the contrary, require each covered employer to offer its covered employees the choice whether or not to contribute to a payroll deduction IRA by automatically enrolling them in the payroll deduction IRA with the opportunity to opt out. A covered employee who is not a participant because that employee has opted out will be automatically reenrolled with the opportunity to opt out again at regular or ad hoc intervals determined by the board in its discretion, but not more frequently than annually; [PL 2021, c. 356, §1 (NEW).]

C. Provide that the IRA to which contributions are made is a Roth IRA, except that the board has the authority at any time, in its discretion, to add an option for all participants to affirmatively elect to contribute to a traditional IRA as an alternative to the Roth IRA; [PL 2021, c. 356, §1 (NEW).]

D. Provide that, unless otherwise specified by the covered employee, a covered employee must automatically initially contribute 5% of the covered employee's salary or wages to the program and may elect to opt out of the program at any time or contribute at any higher or lower rate, expressed as a percentage of salary or wages, or, if the board in its discretion permits, expressed as a flat dollar amount, subject in all cases to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code at no additional charge. The board is authorized to change, from time to time, the 5% automatic initial default contribution rate for all covered employees in its discretion; [PL 2021, c. 356, §1 (NEW).]

E. Provide on a uniform basis, if and when the board so determines in its discretion, for an annual increase of each participant's contribution rate, by not more than 1% of salary or wages per year up to a maximum of 10%. Any such increases must apply to participants, as determined by the board in its discretion, either by default or only if initiated by affirmative participant election and are in either case subject to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code; [PL 2023, c. 167, §5 (AMD).]

F. Provide for direct deposit of contributions into investments under the program, including, but not limited to, a default investment such as a series of target date funds and a limited number of investment alternatives including a principal preservation option determined by the board. In addition, the board may provide that each participant's initial contributions, up to a specified dollar amount or for a specified period of time, are required to be invested in a capital preservation investment or, in the board's discretion, must be defaulted into such an investment unless the participant affirmatively opts for a different investment for those contributions. The board shall

determine how often participants will have the opportunity to change their selections of investments for future contributions or existing balances or both; [PL 2023, c. 167, §5 (AMD).]

G. Provide that employer contributions by a covered employer are not required or permitted; [PL 2021, c. 356, §1 (NEW).]

H. Be professionally managed; [PL 2021, c. 356, §1 (NEW).]

I. When possible and practicable, use existing employer and public infrastructure to facilitate contributions, record keeping and outreach and use pooled or collective investment arrangements for amounts contributed to the program; [PL 2021, c. 356, §1 (NEW).]

J. Require the maintenance of separate records and accounting for each account under the program and allow for participants to maintain their accounts regardless of place of employment and to roll over funds into other IRAs or other retirement accounts; [PL 2021, c. 356, §1 (NEW).]

K. Provide for reports on the status of each participant's account to be provided to each participant at least annually and make best efforts to provide each participant frequent or continual online access to information on the status of that participant's account; [PL 2021, c. 356, §1 (NEW).]

L. Provide that each participant owns the contributions to and earnings on amounts contributed to the participant's account under the program and that the State and covered employers have no proprietary interest in those contributions or earnings; [PL 2021, c. 356, §1 (NEW).]

M. Be designed and implemented in a manner consistent with federal law to the extent that it applies and consistent with the program not being preempted by, and the payroll deduction IRAs and covered employers not being subject to, ERISA; [PL 2021, c. 356, §1 (NEW).]

N. Promote expanded retirement saving by encouraging employers in the State that would otherwise be covered employers to instead adopt a specified tax-favored retirement plan; [PL 2021, c. 356, §1 (NEW).]

O. Make provision for participation in the program by individuals who are not employees, such as self-employed individuals and independent contractors, as provided in rules adopted pursuant to section 174, subsection 2; [PL 2021, c. 356, §1 (NEW).]

P. Seek to keep fees, costs and expenses of the program as low as practicable, except that any administrative fee imposed on a covered employee for participating in the program may not exceed a reasonable amount relative to fees charged by similar established programs in other states. The fee may be an asset-based or investment return fee, flat fee or hybrid of the permissible fee structures identified in this paragraph; [PL 2021, c. 356, §1 (NEW).]

Q. Adopt rules and establish procedures governing the distribution of funds from the program, including such distributions as may be permitted or required by the program and any applicable provisions of tax laws, with the objectives of maximizing financial security in retirement, helping to protect spousal rights and assisting participants with the challenges of decumulation of savings. The board has the authority to provide for one or more reasonably priced distribution options to provide a source of regular retirement income, including income for life or for the participant's life expectancy or for joint lives and life expectancies, as applicable; [PL 2021, c. 356, §1 (NEW).]

R. Adopt rules and establish procedures promoting portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax-qualified plans that accept such rollovers or transfers; [PL 2021, c. 356, §1 (NEW).]

S. Establish penalties in accordance with subsection 4 for a covered employer that fails without reasonable cause to enroll a covered employee in the program as required or that fails to transmit a payroll deduction IRA contribution to the program as required. A lack of reasonable cause is established by the failure to enroll after the program communicates with the employer 3 times; [PL 2023, c. 167, §5 (AMD).]

T. In accordance with subsection 1, paragraph C, use private sector entities to administer the program and invest the contributions to the program under the supervision and guidance of the board; and [PL 2021, c. 356, §1 (NEW).]

U. Allow the board to provide for the establishment, maintenance, administration, operation and implementation of the program to be carried out jointly with, or in partnership, collaboration, coordination or alliance with one or more other states, the Federal Government or any federal, state or local agencies or instrumentalities. [PL 2021, c. 356, §1 (NEW).]
[PL 2023, c. 167, §5 (AMD).]

3. Implementation. The board may implement the program in stages, which may include a pilot program and phasing in the program based on the size of employers, or other factors. A covered employer shall offer the program to its covered employees no later than December 31, 2024.

A covered employer with fewer than 5 employees is not required to offer the program to its covered employees but may offer the program to its employees at the option of the employer and in accordance with rules established by the board.

A. [PL 2023, c. 167, §6 (RP).]

B. [PL 2023, c. 167, §6 (RP).]

C. [PL 2023, c. 167, §6 (RP).]

[PL 2023, c. 167, §6 (RPR).]

4. Penalties. The board shall establish and enforce penalties in accordance with this subsection.

A. If a covered employer fails to enroll a covered employee without reasonable cause, the covered employer is subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the program or had not opted out of participation in the program and, for each calendar year beginning after the date on which a penalty has been assessed with respect to a covered employee, is subject to a penalty for any portion of that calendar year during which the covered employee continues to be unenrolled without opting out of participation in the program. The amount of any penalty imposed on a covered employer for the failure to enroll a covered employee without reasonable cause is determined as follows:

(1) From July 1, 2025 to June 30, 2026, the maximum penalty per covered employee is \$20;

(2) From July 1, 2026 to June 30, 2027, the maximum penalty per covered employee is \$50; and

(4) On or after July 1, 2027, the maximum penalty per covered employee is \$100. [PL 2023, c. 167, §7 (AMD).]

B. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee for which it is established that the covered employer did not know that the failure existed and exercised reasonable diligence to meet the requirements of this chapter. [PL 2021, c. 356, §1 (NEW).]

C. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee if the covered employer exercised reasonable diligence to meet the requirements of this chapter and the covered employer complies with those requirements with respect to each covered employee by the end of the 90-day period beginning on the first date the covered employer knew, or exercising reasonable diligence would have known, that the failure existed. The covered employer is deemed to have known that the failure existed after receiving 3 communications from the program. [PL 2023, c. 167, §8 (AMD).]

D. In the case of a failure that is due to reasonable cause and not to willful neglect, all or part of the penalty may be waived to the extent that the payment of the penalty would be excessive or otherwise inequitable relative to the failure involved. [PL 2021, c. 356, §1 (NEW).]

E. If a covered employer fails to remit a payroll deduction contribution to the program on the earliest date the amount withheld from the covered employee's compensation can reasonably be segregated from the covered employer's assets, but not later than the 15th day of the month following the month in which the covered employee's contribution amounts are withheld from the covered employee's paycheck, the failure to remit the contribution on a timely basis is subject to the same penalties as apply to employer misappropriation of employee wage withholdings and to the penalties specified in paragraph A. [PL 2021, c. 356, §1 (NEW).]

F. The Attorney General shall represent the board in enforcement and collection of penalties. [PL 2021, c. 356, §1 (NEW).]

[PL 2023, c. 167, §§7, 8 (AMD).]

SECTION HISTORY

PL 2021, c. 356, §1 (NEW). PL 2023, c. 167, §§3-8 (AMD).

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