MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Paden

To: Appropriations

# HOUSE BILL NO. 704

AN ACT TO ESTABLISH THE MISSISSIPPI SECURE CHOICE SAVINGS PROGRAM, WHICH IS A RETIREMENT SAVINGS PROGRAM SPONSORED BY THE STATE OF MISSISSIPPI FOR CERTAIN EMPLOYERS WHO DO NOT ALREADY OFFER A RETIREMENT PLAN, IN THE FORM OF AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION INDIVIDUAL RETIREMENT ACCOUNT (IRA), FOR THE PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR PRIVATE-SECTOR EMPLOYEES IN A CONVENIENT, LOW-COST AND PORTABLE MANNER; TO CREATE THE MISSISSIPPI SECURE CHOICE SAVINGS PROGRAM FUND, WHICH WILL CONSIST OF MONIES RECEIVED FROM ENROLLEES AND PARTICIPATING EMPLOYERS THROUGH AUTOMATIC PAYROLL DEDUCTIONS; TO CREATE THE MISSISSIPPI SECURE CHOICE ADMINISTRATIVE FUND TO PAY FOR THE ADMINISTRATIVE EXPENSES OF THE BOARD; TO CREATE THE MISSISSIPPI SECURE CHOICE SAVINGS BOARD, PROVIDE FOR THE MEMBERSHIP OF THE BOARD AND PRESCRIBE THE DUTIES OF THE BOARD; TO REQUIRE THE BOARD TO ENGAGE INVESTMENT MANAGERS TO INVEST THE PROGRAM FUND; TO REQUIRE THE BOARD TO ESTABLISH INVESTMENT OPTIONS FOR ENROLLEES; TO REQUIRE THE BOARD TO DESIGN AND PROVIDE TO ALL EMPLOYERS AN EMPLOYER INFORMATION PACKET AND AN EMPLOYEE INFORMATION PACKET; TO PROVIDE THAT THE PROGRAM WILL BE IMPLEMENTED AND ENROLLMENT OF EMPLOYEES WILL BEGIN IN 2023, AND REQUIRE THAT ALL EMPLOYEES BE ENROLLED AFTER DECEMBER 31, 2025; TO PROVIDE THAT THE STATE HAS NO DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY RETIREMENT SAVINGS BENEFITS ACCRUED BY ANY INDIVIDUAL UNDER THE PROGRAM; TO REQUIRE ANNUAL REPORTS BY THE BOARD AND AUDITS OF THE PROGRAM; TO PROVIDE FOR PENALTIES ON EMPLOYERS WHO FAIL TO COMPLY WITH THE REQUIREMENTS OF THIS ACT; TO PROVIDE THAT THE DEPARTMENT OF REVENUE WILL ENFORCE THE COLLECTIONS OF THE PENALTIES; TO AUTHORIZE THE BOARD TO ADOPT ANY RULES AS NECESSARY TO IMPLEMENT THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1. Short title.** This act may be cited as the Mississippi Secure Choice Savings Program Act.

**SECTION 2. Definitions.** (1) Unless the context requires a different meaning or as expressly provided in this section, all terms used in this act shall have the same meaning as when used in a comparable context in the Internal Revenue Code.

(2) As used in this act, the following terms shall have the meaning as defined in this section:

(a) "Board" means the Mississippi Secure Choice Savings Board established under this act.

(b) "Commissioner" means the Commissioner of Revenue.

(c) "Department" means the Department of Revenue.

(d) "Employee" means any individual who is eighteen (18) years of age or older, who is employed by an employer, and who has wages that are allocable to Mississippi during a calendar year under the provisions of the Mississippi income tax laws.

(e) "Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in Mississippi, whether for profit or not for profit, that (i) has at no time during the previous calendar year employed fewer than twenty-five (25) employees in the state, (ii) has been in business at least two (2) years, and (iii) 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 in the preceding two (2) years.

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

(g) "Fund" means the Mississippi Secure Choice Savings Program Fund.

(h) "Internal Revenue Code" means Internal Revenue Code, or any successor law, in effect for the calendar year.

(i) "IRA" means a Roth IRA (individual retirement account) under Section 408A of the Internal Revenue Code.

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

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

(l) "Program" means the Mississippi Secure Choice Savings Program.

(m) "Small employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in Mississippi, whether for profit or not for profit, that (i) employed less than twenty-five (25) employees at any one time in the state throughout the previous calendar year, or (ii) has been in business less than two (2) years, or both subparagraphs (i) and

(ii), but that notifies the board that it is interested in being a participating employer.

(n) "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 during the calendar year.

**SECTION 3. Establishment of Mississippi Secure Choice Savings Program.** There is established a retirement savings program in the form of an automatic enrollment payroll deduction IRA, known as the Mississippi Secure Choice Savings Program, which shall be administered by the board created in Section 6 of this act for the purpose of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner.

**SECTION 4. Mississippi Secure Choice Savings Program Fund.** (1) There is established the Mississippi Secure Choice Savings Program Fund as a trust outside of the State Treasury, with the board created in Section 6 of this act as its trustee. The fund shall include the IRAs of enrollees, which shall be accounted for as individual accounts. Monies in the fund shall consist of monies received from enrollees and participating employers through automatic payroll deductions and contributions to savings made under 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.

(2) The amounts deposited in the fund shall not constitute property of the state and the fund shall not be construed to be an agency, department or institution 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, those funds.

(3) The Mississippi Secure Choice Savings Program Fund is an instrumentality of the state, and as such, is exempt from the applicable provisions of the Mississippi Securities Act of 2010.

**SECTION 5. Mississippi Secure Choice Administrative Fund.** (1) The Mississippi Secure Choice Administrative Fund ("administrative fund") is created as a special fund in the State Treasury. The monies in the administrative fund shall be expended by the board upon appropriation by the Legislature.

(2) The board shall use monies in the administrative fund to pay for administrative expenses that it incurs in the performance of its duties under this act, and to cover start-up administrative expenses that it incurs in the performance of its duties under this act. The administrative fund may receive any grants or other monies designated for administrative purposes from the state, or any unit of federal or local government, or any other person, firm, partnership, or corporation.

(3) All income from the investment of funds in the administrative fund shall be credited to the fund, and any funds remaining in the administrative fund at the end of a fiscal year shall not lapse into the State General Fund. The State Treasurer shall be the administering agency for the administrative fund on behalf of the board.

**SECTION 6. Composition of the board.** (1) There is created the Mississippi Secure Choice Savings Board. The board shall consist of the following five (5) members:

(a) The State Treasurer, or his or her designee, who shall serve as chair;

(b) The State Fiscal Officer, or his or her designee;

(c) A representative of the public with expertise in retirement savings plan administration or investment, or both, appointed by the Governor;

(d) A representative of participating employers, appointed by the Governor; and

(e) A representative of enrollees, appointed by the Governor.

(2) Members of the board shall serve without compensation but may be reimbursed for necessary travel expenses incurred in connection with their board duties from funds appropriated for that purpose.

(3) The initial appointments for the Governor's appointees shall be as follows: the representative of the public for a term

ending on June 30, 2025; the representative of participating employers for a term ending on June 30, 2024; and the representative of enrollees for a term ending on June 30, 2023. After the expiration of the initial terms, all of the Governor's appointees shall be appointed for terms of four (4) years from the expiration date of the previous term. All appointments by the Governor shall be made with the advice and consent of the Senate.

(4) 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.

(5) Each board member, before assuming office, shall take an oath that he or she will diligently and honestly administer the affairs of the board and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the program.

**SECTION 7. Fiduciary duty.** The board, the individual members of the board, the trustee appointed under paragraph (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) For the exclusive purposes of providing benefits to enrollees and beneficiaries and defraying reasonable expenses of administering the program;

(b) 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 like character and with like aims; and

(c) By using any contributions paid by employees and employers into the trust 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.

**SECTION 8. Duties of the Board.** In addition to the other duties and responsibilities stated in this act, the board shall:

(a) Cause the program to be designed, established and operated in a manner that:

(i) Accords with best practices for retirement savings vehicles;

(ii) Maximizes participation, savings, and sound investment practices;

(iii) Maximizes simplicity, including ease of administration for participating employers and enrollees;

(iv) Provides an efficient product to enrollees by pooling investment funds;

(v) Ensures the portability of benefits; and

(vi) Provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement.

(b) Appoint a trustee to the IRA 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 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 every four (4) years, including, but not limited to, a review of returns, fees, and customer service. A copy of reviews conducted under this paragraph (f) shall be posted to the board's Internet website.

(g) Determine the number and duties of staff members needed to administer the program and assemble such a staff, including, as needed, employing staff, appointing a program administrator, and entering into contracts with the State Treasurer to make employees of the State Treasurer's office available to administer the program.

(h) Cause monies in the fund to 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 his or her 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 under 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 monies 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 subsection (2) of Section 6 of this act, paragraphs (e), (g), (i), and (m) of this section, subsection (2) of Section 11 of this act, subsection (1) of Section 18 of this act, and subsection (14) of Section 19 of this act. Upon appropriation by the Legislature for that purpose, 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

start-up funds provided by the state, shall be paid only out of monies on deposit in the fund. However, private funds or federal funding received under paragraph (l) of this section in order to implement the program until the fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment. The board shall keep total annual expenses as low as possible, but in no event shall they exceed seventy-five one-hundredths percent (0.75%) of the total trust balance.

(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) Select a default contribution rate for program participants within the range of three percent (3%) to six percent (6%) of an enrollee's wages.

(r) Facilitate education and outreach to employers and employees.

(s) 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.

(t) Carry out the duties and obligations of the program in an effective, efficient, and low-cost manner.

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

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

**SECTION 9. Risk management.** The board shall 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 adopt the statement of investment policy and any changes in the investment policy at a public meeting of the board. The investment policy and any changes to the investment policy

shall be published on the board's or State Treasurer's website at least thirty (30) days before implementation of the policy.

**SECTION 10. Investment firms.** (1) The board shall engage, after an open bid process, an investment manager or managers to invest the fund and any other assets of the program. Monies in the fund may be invested or reinvested by the State Treasurer's Office or may be invested in whole or in part under contract with private investment managers, or both, as selected by the board. In selecting the investment manager or managers, the board shall take into consideration and give weight to the investment manager's fees and charges in order to reduce the program's administrative expenses.

(2) The investment manager or managers shall comply with any and all applicable federal and state laws, rules, and regulations, as well as any and all rules, policies, and guidelines promulgated by the board with respect to the program and the investment of the fund, including, but not limited to, the investment policy.

(3) The investment manager or managers shall provide such reports as the board deems necessary for the board to oversee each investment manager's performance and the performance of the fund.

**SECTION 11. Investment options.** (1) The board shall establish as an investment option a life-cycle fund with a target date based upon the age of the enrollee. This shall be the default investment option for enrollees who fail to elect an investment option unless and until the board designates by rule a

new investment option as the default as described in subsection (3) of this section.

(2) The board also may establish any or all of the following additional investment options:

(a) A conservative principal protection fund;

(b) A growth fund;

(c) A secure return fund whose primary objective is the preservation of the safety of principal and the provision of a stable and low-risk rate of return; if the board elects to establish a secure return fund, the board may procure any insurance, annuity, or other product to insure the value of individuals' accounts and guarantee a rate of return; the cost of the funding mechanism shall be paid out of the fund; under no circumstances shall the board, program, fund, the state, or any participating employer assume any liability for investment or actuarial risk; the board shall determine whether to establish such investment options based upon an analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation;

(d) An annuity fund.

(3) If the board elects to establish a secure return fund, the board shall then determine whether that option will replace the target date or life-cycle fund as the default investment option for enrollees who do not elect an investment option. In making that determination, the board shall consider the cost, risk profile, benefit level, and ease of enrollment in the secure

return fund. The board may at any time thereafter revisit this question and, based upon an analysis of these criteria, establish either the secure return fund or the life-cycle fund as the default for enrollees who do not elect an investment option.

**SECTION 12. Benefits.** Interest, investment earnings, and investment losses shall be allocated to individual program accounts as established by the board under paragraph (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.

**SECTION 13. Employer and employee information packets and disclosure forms.** (1) Before 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 information regarding the vendor Internet website described in subsection (10) of Section 14 of this act.

(2) The board shall provide for the contents of both the employee information packet and the employer information packet.

(3) The employee information packet shall include a disclosure form, which shall explain, but not be limited to, all of the following:

(a) The benefits and risks associated with making contributions to the program;

(b) The mechanics of how to make contributions to the program;

(c) How to opt out of the program;

(d) How to participate in the program with a level of employee contributions other than the default contribution rate;

(e) The process for withdrawal of retirement savings;

(f) How to obtain additional information about the program;

(g) 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 under this act;

(h) That the program is not an employer-sponsored retirement plan; and

(i) That the program fund is not guaranteed by the state.

(4) The employee information packet also shall 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 the default contribution rate.

(5) Participating employers shall supply the employee information packet to employees upon launch 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 the default contribution rate at that time.

**SECTION 14. Program implementation and enrollment.** (1) Except as otherwise provided in Section 21 of this act, the program shall be implemented, and enrollment of employees shall begin in 2023. The board shall establish an implementation timeline under which employers will enroll their employees in the program. The timeline shall include the date by which an employer must begin enrollment of its employees in the program and the date by which enrollment must be complete. The board shall adopt the implementation timeline at a public meeting of the board and shall publicize the implementation timeline. The board shall provide advance notice to employers of their enrollment date and the amount of time to complete enrollment. The board's implementation timeline shall ensure that all employees are required to be enrolled in the program by December 31, 2025. The provisions of this section shall be in force after the board opens the program for enrollment.

(2) Each employer shall establish a payroll deposit retirement savings arrangement to allow each employee to

participate in the program within the timeline set by the board after the program opens for enrollment.

(3) 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 (3) of Section 13 of this act and shall provide payroll deduction retirement savings arrangements for those employees and deposit, on behalf of those employees, these funds into the program. Small employers may, but are not required to, provide payroll deduction retirement savings arrangements for each employee who elects to participate in the program. Small employers' use of automatic enrollment for employees is subject to final rules from the United States Department of Labor. Utilization of automatic enrollment by small employers may be allowed only if it does not create employer liability under the federal Employee Retirement Income Security Act.

(4) 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 at any time, subject to rules promulgated by the board. If an enrollee fails to select a contribution level using the form described in subsection (3) of Section 13 of this act, then he or she shall contribute the default contribution rate

of his or her wages to the program, provided that those 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.

(5) Enrollees may select an investment option from the permitted investment options listed in Section 11 of this act. Enrollees may change their investment option at any time, subject to rules promulgated by the board. If 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 (3) of Section 11 of this act. If the board has not selected a default investment option under subsection (3) 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.

(6) Following initial implementation of the program under 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.

(7) An employee who opts out of the program who later 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.

(8) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, 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.

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

(10) The board shall 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. However, the board shall only establish and maintain an Internet website under this subsection if there is sufficient interest in such an Internet website by private sector providers and if the private sector providers furnish the funding necessary to establish and maintain the Internet website. The board must provide public notice of the availability of and the process for inclusion on the Internet website before it becomes publicly available. This Internet website must be available to the public before the board opens the program for enrollment, and the Internet website address must be included on any Internet website posting or other materials regarding the program offered to the public by the board.

**SECTION 15. Payments.** Employee contributions deducted by the participating employer through payroll deduction shall be paid by the participating employer to the fund using one or more payroll deposit retirement savings arrangements established by the board under paragraph (i) of Section 8 of this act, either:

(a) On or before the last day of the month following the month in which the compensation otherwise would have been payable to the employee in cash; or

(b) Before such later deadline prescribed by the board for making such payments, but not later than the due date for the deposit of tax required to be deducted and withheld relating to collection of income tax at the source on wages or for the deposit of tax required to be paid under the unemployment insurance system for the payroll period to which such payments relate.

**SECTION 16. Duty and liability of the state.** (1) 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.

(2) No state 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.

**SECTION 17. Duty and liability of participating employers.** (1) 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.

(2) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the program. A participating employer shall not be liable with regard to investment returns, program design, and benefits paid to program participants.

**SECTION 18. Audit and reports.** (1) The board shall annually submit an audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program during each calendar year by July 1 of the following year to the Governor, the State Fiscal Officer, the State Treasurer, and the Legislature. 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.

(2) 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 by the participating employer on behalf of each employee 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 may determine.

(3) The State Treasurer shall prepare a report in consultation with the board that includes a summary of the benefits provided by the program, including the number of enrollees in the program, the percentage and amounts of investment options and rates of return, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the program and the fund.

**SECTION 19. Penalties.** (1) An employer who fails without reasonable cause to enroll an employee in the program within the time prescribed under Section 14 of this act shall be subject to a penalty equal to:

(a) Two Hundred Fifty Dollars ($250.00) for each employee for each calendar year or portion of a calendar year during which the employee neither was enrolled in the program nor had elected out of participation in the program; or

(b) For each calendar year beginning after the date a penalty has been assessed with respect to an employee, Five Hundred Dollars ($500.00) for any portion of that calendar year during which the employee continues to be unenrolled without electing out of participation in the program.

(2) After determining that an employer is subject to penalty under this section for a calendar year, the department shall issue a notice of proposed assessment to the employer, stating the number of employees for which the penalty is proposed under paragraph (a) of subsection (1) of this section and the number of employees for which the penalty is proposed under paragraph (b) of subsection (1) of this section for the calendar year, and the total amount of penalties proposed.

Upon the expiration of ninety (90) days after the date on which a notice of proposed assessment was issued, the penalties specified in the notice shall be deemed assessed, unless the employer had filed a protest with the department under subsection (3) of this section.

If, within ninety (90) days after the date on which it was issued, a protest of a notice of proposed assessment is filed under subsection (3) of this section, the penalties specified in the notice shall be deemed assessed upon the date when the decision of the department with respect to the protest becomes final.

(3) A written protest against the proposed assessment shall be filed with the department in such form as the department may by rule prescribe, setting forth the grounds on which such protest is based. If such a protest is filed within ninety (90) days after the date the notice of proposed assessment is issued, the department shall reconsider the proposed assessment and shall 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, setting forth the department's findings of fact and the basis of decision. The decision of the department shall become final:

(a) If no action for appeal of the decision of department is filed with the Board of Review under Section 27-77-1 et seq., on the date on which the time for filing an appeal has expired; or

(b) If a timely action for appeal of the decision of the department is filed with the Board of Review under Section 27-77-1 et seq., on the date all proceedings by the Board of Review, the Board of Tax Appeals and in court for the appeal of the assessment have terminated or the time for the taking of those appeals has expired without those proceedings being taken.

(4) As soon as practicable after the penalties specified in a notice of proposed assessment are deemed assessed, the department shall give notice to the employer liable for any unpaid portion of the assessment, stating the amount due and demanding

payment. If an employer neglects or refuses to pay the entire liability shown on the notice and demand within ten (10) days after the notice and demand is issued, the unpaid amount of the liability shall be a lien in favor of the State of Mississippi upon all property and rights to property, whether real or personal, belonging to the employer, and the provisions in the Mississippi income tax laws regarding liens, levies and collection actions with regard to assessed and unpaid liabilities under those laws, including the periods for taking any action, shall apply.

(5) 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 such form as the department may by rule prescribe 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 such a protest is filed, the department shall reconsider the denial and grant the employer a hearing. As soon as practicable after such 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 becomes final ninety (90) days after the date of issuance of the notice of the denial except for such 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:

(a) If no action for appeal of the decision of the department is filed with the Board of Review under Section 27-77-1 et seq., on the date on which the time for filing an appeal has expired; or

(b) If a timely action for appeal of the decision of the department is filed with the Board of Review under Section 27-77-1 et seq., on the date all proceedings by the Board of Review, the Board of Tax Appeals and in court for the appeal of the assessment have terminated or the time for the taking of those appeals has expired without those proceedings being taken.

(6) No notice of proposed assessment may 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 (1) year after the date of payment of the amount to be refunded.

(7) The department may adopt any rules necessary to carry out its duties under this section.

(8) Whenever notice is required by this section, it may be given or issued by mailing it by first-class mail addressed to the person concerned at his or her last known address.

(9) 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 its duly authorized agents and employees.

(10) The department may require employers to report information relevant to their compliance with this act on returns otherwise due from the employers under Section 27-7-309 and failure to provide the requested information on a return shall cause such return to be treated as unprocessable.

(11) 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.

(12) 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. Nothing contained in this subsection shall prevent the commissioner 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 employer shall not be disclosed. Nothing contained in this subsection shall prevent the commissioner 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.

(13) The department may retain three percent (3%) of the amount of the penalties collected under this section to defray the costs incurred by the department in the collection of the penalties. The remainder of the penalties collected shall be deposited into the State General Fund.

(14) 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 the penalties collected under this section.

(15) This section shall become operative nine (9) months after the board notifies the commissioner that the program has been implemented. Upon receipt of that 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 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, 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 (10) of Section 15 of this act.

**SECTION 20. Rules.** The board and the State Treasurer shall adopt, in accordance with the Mississippi Administrative Procedures Law, any rules that may be necessary to implement this act.

**SECTION 21. Delayed implementation.** If the board does not obtain adequate funds to implement the program within the time frame set forth under Section 14 of this act, the board may delay the implementation of the program.

**SECTION 22. Federal considerations.** The board shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income Security Act regarding the applicability of the federal Employee Retirement Income Security Act to the program. The board may not implement the program if the IRA arrangements offered under the program fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that the program is an employee benefit plan and state or employer liability is established under the federal Employee Retirement Income Security Act.

**SECTION 23.** This act shall take effect and be in force from and after July 1, 2021.