

HOUSE BILL No. 5776

July 13, 2016, Introduced by Reps. Dianda, Wittenberg, Irwin, Lane and Brinks and referred to the Committee on Financial Services.

A bill to create the secure retirement savings program to provide retirement saving options for certain employees; to create the secure retirement savings board and prescribe its powers and duties; to provide for the powers and duties of certain governmental officers and entities; to require participation in the program by certain employers; to create the secure retirement savings program fund as a trust fund outside the state treasury consisting of employee retirement accounts; to establish the Michigan secure retirement administrative fund to pay program administrative expenses; to provide for civil fines; and to require the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. This act shall be known and may be cited as the
- 2 "retirement savings program act".

1 Sec. 2. As used in this act:

2 (a) "Board" means the secure retirement savings board
3 established in section 6.

4 (b) "Department" means the department of treasury.

5 (c) "Director" means the state treasurer.

6 (d) "Employee" means an individual who is 18 years of age or
7 older, is employed by an employer, and has wages allocable to this
8 state during the calendar year for purposes of the income tax act
9 of 1967, 1967 PA 281, MCL 206.1 to 206.713.

10 (e) "Employer" means a person or entity engaged in a for-
11 profit or nonprofit business, industry, profession, trade, or other
12 enterprise in this state, that has continuously during the previous
13 calendar year employed not fewer than 25 employees in this state,
14 has been in business at least 2 years, and has not offered a
15 qualified retirement plan, including, but not limited to, a plan
16 qualified under section 401(a), section 401(k), section 403(a),
17 section 403(b), section 408(k), section 408(p), or section 457(b)
18 of the internal revenue code of 1986, 26 USC 401, 403, 408, and
19 457, in the preceding 2 years.

20 (f) "Enrollee" means an employee who is enrolled in the
21 program.

22 (g) "Fund" means the Michigan secure retirement savings
23 program fund.

24 (h) "Internal revenue code" means the internal revenue code of
25 1986.

26 (i) "IRA" means a Roth individual retirement account under
27 section 408A of the internal revenue code, 26 USC 408A.

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

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

8 (l) "Program" means the Michigan secure retirement savings
9 program.

10 (m) "Small employer" means a person or entity engaged in a
11 business, industry, profession, trade, or other enterprise in this
12 state, whether for profit or not for profit, that employed fewer
13 than 25 employees in this state at any time in the previous
14 calendar year or has been in business less than 2 years, and that
15 notifies the department that it is interested in being a
16 participating employer.

17 (n) "Wages" means any compensation within the meaning of
18 section 219(f)(1) of the internal revenue code, 26 USC 219, that is
19 received by an enrollee from a participating employer during the
20 calendar year.

21 Sec. 3. A retirement savings program in the form of an
22 automatic enrollment payroll deduction IRA, known as the Michigan
23 secure retirement savings program, is established in the
24 department. The board shall administer the program for the purpose
25 of promoting greater retirement savings for private-sector
26 employees in a convenient, low-cost, and portable manner.

27 Sec. 4. (1) The secure retirement savings program fund is

1 established as a trust outside of the state treasury, with the
2 board as its trustee. The fund includes the individual retirement
3 accounts of enrollees, which must be maintained as individual
4 accounts. The fund consists of money received from enrollees and
5 participating employers through automatic payroll deductions and
6 contributions made under this act. The fund must be operated in a
7 manner determined by the board so that the accounts of enrollees
8 established under the program meet the requirements for IRAs under
9 the internal revenue code.

10 (2) The money deposited in the fund is not property of this
11 state, and the fund must not be construed to be a department,
12 institution, or agency of this state. Money in the fund must not be
13 commingled with state money, and this state has no claim to or
14 against, or interest in, the money in the fund.

15 Sec. 5. The secure retirement administrative fund is created
16 as a separate trust fund in the state treasury and is continuously
17 appropriated for the authorized purposes of the fund. The board
18 shall use money in the secure retirement administrative fund to pay
19 for administrative expenses it incurs in the performance of its
20 duties under this act. The board shall use money in the secure
21 retirement administrative fund to cover start-up administrative
22 expenses it incurs in the performance of its duties under this act.
23 The secure retirement administrative fund may receive grants or
24 other money designated for administrative purposes from this state;
25 a unit of federal or local government; or any other person, firm,
26 partnership, or corporation. Any interest or earnings attributable
27 to money in the secure retirement administrative fund must be

1 deposited into the secure retirement administrative fund.

2 Sec. 6. (1) There is created in the department the secure
3 retirement savings board. The board consists of the following 7
4 members:

5 (a) The state treasurer, or his or her designee, who shall
6 serve as chair.

7 (b) A designee of the state treasurer.

8 (c) The director of the department of technology, management,
9 and budget or his or her designee.

10 (d) Two public representatives with expertise in retirement
11 savings plan administration or investment, or both, appointed by
12 the governor.

13 (e) A representative of participating employers, appointed by
14 the governor.

15 (f) A representative of enrollees, appointed by the governor.

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

19 (3) The initial appointments for the governor's appointees are
20 as follows: 1 public representative for 4 years; 1 public
21 representative for 2 years; the representative of participating
22 employers for 3 years; and the representative of enrollees for 1
23 year. Subsequent appointments are for terms of 4 years.

24 (4) A vacancy in the term of an appointed board member is
25 filled for the balance of the unexpired term in the same manner as
26 the original appointment.

27 (5) Each appointment by the governor is subject to the advice

1 and consent of the senate. For a vacancy during a recess of the
2 senate, the governor shall make a temporary appointment until the
3 next meeting of the senate, at which time the governor shall
4 appoint a person to fill the office. Any appointment that has not
5 been acted on by the senate within 60 session days after receipt of
6 notice of the appointment is considered to have received the advice
7 and consent of the senate.

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

14 (a) For the exclusive purposes of providing benefits to
15 enrollees and beneficiaries and defraying reasonable expenses of
16 administering the program.

17 (b) By investing with the care, skill, prudence, and diligence
18 under the prevailing circumstances that a prudent person acting in
19 a like capacity and familiar with those matters would use in the
20 conduct of an enterprise of a like character and with like aims.

21 (c) By using any contributions paid by employees and employers
22 into the trust exclusively for the purpose of paying benefits to
23 the enrollees of the program, for the cost of administration of the
24 program, and for investments made for the benefit of the program.

25 Sec. 8. In addition to the other duties and responsibilities
26 stated in this act, the board shall do all of the following:

27 (a) Cause the program to be designed, established, and

1 operated in a manner that does all of the following:

2 (i) Accords with best practices for retirement savings
3 vehicles.

4 (ii) Maximizes participation, savings, and sound investment
5 practices.

6 (iii) Maximizes simplicity, including ease of administration
7 for participating employers and enrollees.

8 (iv) Provides an efficient product to enrollees by pooling
9 investment funds.

10 (v) Ensures the portability of benefits.

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

13 (b) Appoint a trustee to the fund in compliance with section
14 408 of the internal revenue code, 26 USC 408.

15 (c) Explore and establish investment options, subject to
16 section 11, that offer employees returns on contributions and the
17 conversion of individual retirement savings account balances to
18 secure retirement income without incurring debt or liabilities to
19 this state.

20 (d) Establish the process by which interest, investment
21 earnings, and investment losses are allocated to individual program
22 accounts on a pro rata basis and are computed at the interest rate
23 on the balance of an individual's account.

24 (e) Make and enter into contracts necessary for the
25 administration of the program and fund, including, but not limited
26 to, retaining and contracting with investment managers, private
27 financial institutions, other financial and service providers,

1 consultants, actuaries, counsel, auditors, third-party
2 administrators, and other professionals as necessary.

3 (f) Conduct a review of the performance of any investment
4 vendors every 4 years, including, but not limited to, a review of
5 returns, fees, and customer service. A copy of reviews conducted
6 under this subdivision must be posted to the board's Internet
7 website.

8 (g) Determine the number and duties of staff members needed to
9 administer the program and assemble the staff, including, as
10 needed, employing staff, appointing a program administrator, and
11 entering into contracts with the state treasurer to make employees
12 of the state treasurer's office available to administer the
13 program.

14 (h) Cause money in the fund to be held and invested as pooled
15 investments described in section 11, with a view to achieving cost
16 savings through efficiencies and economies of scale.

17 (i) Evaluate and establish the process by which an enrollee is
18 able to contribute a portion of his or her wages to the program for
19 automatic deposit of those contributions and the process by which
20 the participating employer provides a payroll deposit retirement
21 savings arrangement to forward those contributions and related
22 information to the program, including, but not limited to,
23 contracting with financial service companies and third-party
24 administrators with the capability to receive and process employee
25 information and contributions for payroll deposit retirement
26 savings arrangements or similar arrangements.

27 (j) Design and establish the process for enrollment under

1 section 14, including the process by which an employee can opt not
2 to participate in the program, select a contribution level, select
3 an investment option, and terminate participation in the program.

4 (k) Evaluate and establish the process by which an individual
5 may voluntarily enroll in and make contributions to the program.

6 (l) Accept any grants, appropriations, or other money from
7 this state, any unit of federal, state, or local government, or any
8 other person, firm, partnership, or corporation solely for deposit
9 into the fund, whether for investment or administrative purposes.

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

15 (n) Make provisions for paying administrative costs and
16 expenses for the creation, management, and operation of the
17 program, including the costs associated with subdivisions (e), (g),
18 (i), and (m) and sections 6(2), 11(2), 18(1), and 19(13). Subject
19 to appropriation, the state may pay administrative costs associated
20 with the creation and management of the program until sufficient
21 assets are available in the fund for that purpose. Then, all
22 administrative costs of the fund, including repayment of any start-
23 up funds provided by the state, must be paid only out of money on
24 deposit in the fund. However, private money or federal funding
25 received under subdivision (l) to implement the program until the
26 fund is self-sustaining shall not be repaid unless that money was
27 offered contingent upon the promise of repayment. The board shall

1 keep annual administrative expenses as low as possible and shall
2 not exceed 0.75% of the total trust balance.

3 (o) Allocate administrative fees pro rata to individual
4 retirement accounts in the program.

5 (p) Set minimum and maximum contribution levels in accordance
6 with limits established for IRAs in the internal revenue code.

7 (q) Facilitate education and outreach to employers and
8 employees.

9 (r) Facilitate program compliance with all applicable
10 requirements under the internal revenue code, including tax
11 qualification requirements or any other applicable law and
12 accounting requirements.

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

15 (t) Exercise any and all other powers reasonably necessary to
16 effectuate the program purposes and objectives.

17 (u) Deposit into the Michigan secure retirement administrative
18 fund all grants, gifts, donations, fees, and earnings from
19 investments from the Michigan secure retirement savings program
20 fund that are used to recover administrative costs. All expenses of
21 the board must be paid from the Michigan secure retirement
22 administrative fund.

23 Sec 9. The board shall annually prepare and adopt a written
24 statement of investment policy that includes a risk management and
25 oversight program. The investment policy must prohibit the board,
26 program, and fund from borrowing for investment purposes. The risk
27 management and oversight program must be designed to ensure that an

1 effective risk management system is in place to monitor the risk
2 levels of the program and fund portfolio, to ensure that the risks
3 taken are prudent and properly managed, to provide an integrated
4 process for overall risk management, and to assess investment
5 returns and risk to determine if the risks taken are adequately
6 compensated compared to applicable performance benchmarks and
7 standards. The board shall consider the statement of investment
8 policy and any changes in the investment policy at a public
9 hearing.

10 Sec. 10. (1) The board may engage, after an open bid process,
11 an investment manager or managers to invest the fund and any other
12 assets of the program. Money in the fund may be invested or
13 reinvested by the state treasurer's office or may be invested in
14 whole or in part under contract with private investment managers
15 selected by the board. In selecting the investment manager or
16 managers, the board shall take into consideration the investment
17 manager's fees and charges to reduce the program's administrative
18 expenses.

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

24 (3) The investment manager or managers shall provide the
25 reports the board considers necessary for the board to oversee each
26 investment manager's performance and the performance of the fund.

27 Sec. 11. (1) The board shall establish as an investment option

1 a life-cycle fund with a target date based on the age of the
2 enrollee. This option is the default investment for enrollees who
3 fail to elect an investment option unless and until the board
4 designates by rule a new investment option as the default as
5 described in subsection (3).

6 (2) The board may establish any of the following additional
7 investment options:

8 (a) A conservative principal protection fund.

9 (b) A growth fund.

10 (c) A secure return fund whose primary objective is the
11 preservation of the safety of principal and the provision of a
12 stable and low-risk rate of return. If the board elects to
13 establish a secure return fund, the board may procure any
14 insurance, annuity, or other product to insure the value of
15 individuals' accounts and guarantee a rate of return. The cost of
16 the funding mechanism must be paid out of the fund. The board, the
17 program, the fund, this state, or any participating employer shall
18 not assume any liability for investment or actuarial risk. The
19 board shall determine whether to establish investment options based
20 on an analysis of their cost, risk profile, benefit level,
21 feasibility, and ease of implementation.

22 (d) An annuity fund.

23 (3) If the board elects to establish a secure return fund, the
24 board shall then determine whether that option will be designated
25 to replace the target date or life-cycle fund as the default
26 investment option for enrollees who do not elect an investment
27 option. In making the determination, the board shall consider the

1 cost, risk profile, benefit level, and ease of enrollment in the
2 secure return fund. The board may at any time revisit the question
3 and, based on an analysis of the criteria, establish either the
4 secure return fund or the life-cycle fund as the default for
5 enrollees who do not elect an investment option.

6 Sec. 12. Interest, investment earnings, and investment losses
7 must be allocated to individual program accounts as established by
8 the board under section 8(d). An individual's retirement savings
9 benefit under the program must be an amount equal to the balance in
10 the individual's program account on the date the retirement savings
11 benefit becomes payable. The state is not liable for any payment of
12 benefits to any participant in the program.

13 Sec. 13. (1) Before opening the program for enrollment, the
14 board shall design and disseminate to all employers an employer
15 information packet and an employee information packet. The employer
16 information packet and employee information packet must include
17 background information on the program, appropriate disclosures for
18 employees, and information regarding the vendor Internet website
19 described in section 14(10).

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

22 (3) The employee information packet must include a disclosure
23 form. The disclosure form must explain, but not be limited to, all
24 of the following:

25 (a) The benefits and risks associated with making
26 contributions to the program.

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

1 (c) How to opt out of the program.

2 (d) How to participate in the program with a level of employee
3 contributions other than 3%.

4 (e) The process for withdrawing retirement savings.

5 (f) How to obtain additional information about the program.

6 (g) That employees seeking financial advice should contact
7 financial advisors, that participating employers are not in a
8 position to provide financial advice, and that participating
9 employers are not liable for decisions employees make under this
10 act.

11 (h) That the program is not an employer-sponsored retirement
12 plan.

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

14 (4) The employee information packet must also include a form
15 for an employee to note his or her decision to opt out of
16 participation in the program or elect to participate with a level
17 of employee contributions other than 3%.

18 (5) Participating employers shall supply the employee
19 information packet to employees on launch of the program.
20 Participating employers shall supply the employee information
21 packet to new employees at the time of hiring, and new employees
22 may opt out of participation in the program or elect to participate
23 with a level of employee contributions other than 3% at that time.

24 Sec. 14. (1) Except as otherwise provided in section 21, the
25 program must be implemented and enrollment of employees must begin
26 within 24 months after the effective date of this act. Subsections
27 (2) to (9) apply after the board opens the program for enrollment.

1 (2) An employer shall establish a payroll deposit retirement
2 savings arrangement to allow each employee to participate in the
3 program within 9 months after the board opens the program for
4 enrollment.

5 (3) Employers shall automatically enroll in the program each
6 of their employees who has not opted out of participation in the
7 program using the process described in section 13(3) and shall
8 provide payroll deduction retirement savings arrangements for those
9 employees and deposit the money into the program on their behalf.
10 Small employers may provide payroll deduction retirement savings
11 arrangements for each employee who elects to participate in the
12 program.

13 (4) Enrollees may select a contribution level into the fund.
14 The level may be expressed as a percentage of wages or as a dollar
15 amount up to the deductible amount for the enrollee's taxable year
16 under section 219(b)(1)(A) of the internal revenue code, 26 USC
17 219. An enrollee may change his or her contribution level at any
18 time, subject to rules promulgated by the board. If an enrollee
19 fails to select a contribution level using the process described in
20 section 13(3), he or she shall contribute 3% of his or her wages to
21 the program, but the contributions must not cause the enrollee's
22 total contributions to IRAs for the year to exceed the deductible
23 amount for the enrollee's taxable year under section 219(b)(1)(A)
24 of the internal revenue code, 26 USC 219.

25 (5) Enrollees may select an investment option from the
26 permitted investment options listed in section 11. Enrollees may
27 change their investment option at any time, subject to rules

1 promulgated by the board. If an enrollee fails to select an
2 investment option, the enrollee must be placed in the investment
3 option selected by the board as the default under section 11(3). If
4 the board has not selected a default investment option under
5 section 11(3), an enrollee who fails to select an investment option
6 must be placed in the life-cycle fund investment option.

7 (6) Following initial implementation of the program under this
8 section, at least once every year, participating employers shall
9 designate an open enrollment period during which employees who
10 previously opted out of the program may enroll in the program.

11 (7) An employee who has opted out of the program and
12 subsequently wants to participate through the participating
13 employer's payroll deposit retirement savings arrangement may
14 enroll only during the participating employer's designated open
15 enrollment period or, if permitted by the participating employer,
16 at an earlier time.

17 (8) Employers retain the option to set up any type of
18 employer-sponsored retirement plan, such as a defined benefit plan
19 or a 401(k), Simplified Employee Pension Plan (SEP), or Savings
20 Incentive Match Plan for Employees (SIMPLE) plan, or to offer an
21 automatic enrollment payroll deduction IRA, instead of having a
22 payroll deposit retirement savings arrangement to allow employee
23 participation in the program.

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

26 (10) The board shall establish and maintain an Internet
27 website designed to assist employers in identifying private sector

1 providers of retirement arrangements that can be set up by the
2 employer rather than allowing employee participation in the program
3 under this act. However, the board shall only establish and
4 maintain an Internet website under this subsection if private
5 sector providers show sufficient interest in the website and
6 furnish the funding necessary to establish and maintain it. The
7 board shall provide public notice of the availability of and the
8 process for inclusion on the Internet website before it becomes
9 publicly available. If established, the Internet website must be
10 available to the public before the board opens the program for
11 enrollment, and the Internet website address must be included on
12 any Internet website posting or other materials regarding the
13 program offered to the public by the board.

14 Sec. 15. Employee contributions deducted by the participating
15 employer through payroll deduction must be paid by the
16 participating employer to the fund using 1 or more payroll deposit
17 retirement savings arrangements established by the board under
18 section 8(i), by 1 of the following times:

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

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

1 Sec. 16. (1) This state has no duty and is not liable to a
2 party for the payment of any retirement savings benefits accrued by
3 a individual under the program. Any financial liability for the
4 payment of retirement savings benefits in excess of money available
5 under the program must be borne solely by the entities with whom
6 the board contracts to provide insurance to protect the value of
7 the program.

8 (2) A state board, commission, or agency, or any officer,
9 employee, or member thereof, is not liable for any loss or
10 deficiency resulting from particular investments selected under
11 this act, except for any liability that arises out of a breach of
12 fiduciary duty under section 7.

13 Sec. 17. (1) Participating employers are not liable for an
14 employee's decision to participate in, or opt out of, the program
15 or for the investment decisions of the board or of any enrollee.

16 (2) A participating employer is not a fiduciary, and is not
17 considered to be a fiduciary, with regard to the program. A
18 participating employer has no responsibility for the
19 administration, investment, or investment performance of the
20 program. A participating employer is not liable as to investment
21 returns, program design, or benefits paid to program participants.

22 Sec. 18. (1) By July 1 of each year after the program begins
23 operating, the board shall submit to the governor, the state
24 treasurer, and the standing committees of the senate and house of
25 representatives concerned with retirement issues all of the
26 following:

27 (a) An audited financial report, prepared in accordance with

1 generally accepted accounting principles, on the operations of the
2 program during the prior calendar year. The annual audit must be
3 made by an independent certified public accountant and must
4 include, but is not limited to, direct and indirect costs
5 attributable to the use of outside consultants, independent
6 contractors, and any other persons who are not state employees for
7 the administration of the program.

8 (b) A report prepared by the board, including at a minimum, a
9 summary of the benefits provided by the program, including the
10 number of enrollees in the program; the percentage and amounts of
11 investment options and rates of return; and any other information
12 that is relevant to make a full, fair, and effective disclosure of
13 the operations of the program and the fund.

14 (2) In addition to any other statements or reports required by
15 law, the board shall provide the following periodic reports at
16 least annually, that may also include any other information
17 regarding the program as the board may determine:

18 (a) A report of the names of each enrollee employed by the
19 participating employer and the amounts of contributions made by the
20 participating employer on behalf of each employee during the
21 reporting period.

22 (b) A report to each enrollee of the contributions and
23 investment income allocated to, withdrawals from, and balances in
24 his or her program account for the reporting period.

25 Sec. 19. (1) An employer that fails without reasonable cause
26 to enroll an employee in the program within the time prescribed
27 under section 14 is subject to a penalty equal to 1 the following:

1 (a) Two hundred fifty dollars for each employee for each
2 calendar year or portion of a calendar year during which the
3 employee neither was enrolled in the program nor had elected out of
4 participation in the program.

5 (b) For each calendar year beginning after the date a penalty
6 has been assessed with respect to an employee, \$500.00 for any
7 portion of that calendar year during which an employee who has not
8 opted out of participation in the program under the process
9 described in section 13(3) is not enrolled in the program.

10 (2) After determining that an employer is subject to penalty
11 under this section for a calendar year, the department shall issue
12 a notice of proposed assessment to the employer, stating the number
13 of employees for which the penalty is proposed under subsection

14 (1)(a) and the number of employees for which the penalty is
15 proposed under subsection (1)(b) for the calendar year, and the
16 total amount of fines proposed. If the employer files a protest
17 with the department under subsection (3) within 90 days after the
18 date on which the notice of proposed assessment is issued, the
19 fines specified in the notice are considered assessed on the date
20 when a decision of the department upholding the assessment becomes
21 final. If a protest is not filed within that time, the assessment
22 date of the fines is the ninety-first day after the assessment
23 notice is issued.

24 (3) A written protest against the proposed assessment must be
25 filed with the department in the form the department requires by
26 rule, setting forth the grounds on which the protest is based. If
27 the protest is filed within 90 days after the date the notice of

1 proposed assessment is issued, the department shall reconsider the
2 proposed assessment and shall grant the employer a hearing. As soon
3 as practicable after the reconsideration and hearing, the
4 department shall issue a notice of decision to the employer,
5 setting forth the department's findings of fact and the basis of
6 the decision. The decision of the department becomes final as
7 follows:

8 (a) If no further action for review of the decision is taken
9 under the administrative procedures act of 1969, 1969 PA 306, MCL
10 24.201 to 24.328, on the date on which the time for requesting the
11 review has expired.

12 (b) If a timely action for review of the decision is taken
13 under the administrative procedures act of 1969, 1969 PA 306, MCL
14 24.201 to 24.328, on the date all proceedings in court for the
15 review of the assessment have terminated or the time for further
16 appeal has expired.

17 (4) As soon as practicable after the fines specified in a
18 notice of proposed assessment are considered assessed, the
19 department shall notify the employer liable for any unpaid portion
20 of the assessment, stating the amount due and demanding payment. If
21 an employer neglects or refuses to pay the entire liability shown
22 on the notice and demand within 10 days after the notice and demand
23 are issued, the unpaid amount is a lien in favor of this state on
24 all property and rights to property, whether real or personal,
25 belonging to the employer, and the provisions in the income tax act
26 of 1967, 1967 PA 281, MCL 206.1 to 206.713, regarding liens,
27 levies, and collection actions for unpaid liabilities under that

1 act, including the periods for taking any action, apply to the
2 unpaid amount.

3 (5) An employer that has overpaid a penalty assessed under
4 this section may file a claim for refund with the department. A
5 claim must be in writing in the form the department requires by
6 rule and must state the specific grounds for the claim. As soon as
7 practicable after receiving the claim, the department shall examine
8 it and either issue a refund or issue a notice of denial. If the
9 employer files a protest, the department shall reconsider the
10 denial and grant the employer a hearing. As soon as practicable
11 after reconsideration and hearing, the department shall issue a
12 notice of decision to the employer. In each case decided in whole
13 or in part adversely to the employer, the notice must set forth
14 briefly the department's findings of fact and the basis of
15 decision. A denial of a claim for refund becomes final 90 days
16 after the date it is issued, except for amounts as to which the
17 employer has filed a protest with the department. If a protest has
18 been timely filed, the decision of the department becomes final as
19 follows:

20 (a) If no further action for review of the decision is taken
21 under the administrative procedures act of 1969, 1969 PA 306, MCL
22 24.201 to 24.328, on the date on which the time for requesting the
23 review has expired.

24 (b) If a timely action for review of the decision is taken
25 under the administrative procedures act of 1969, 1969 PA 306, MCL
26 24.201 to 24.328, on the date all proceedings in court for the
27 review of the assessment have terminated or the time for further

1 appeal has expired.

2 (6) A notice of proposed assessment must not be issued with
3 respect to a calendar year after June 30 of the fourth subsequent
4 calendar year. A claim for refund may not be filed more than 1 year
5 after the date of payment.

6 (7) The administrative procedures act of 1969, 1969 PA 306,
7 MCL 24.201 to 24.328, and the rules adopted under that act apply to
8 and govern all proceedings for the judicial review of final
9 decisions of the department in response to a protest filed by the
10 employer under subsections (3) and (5).

11 (8) Notice required under this section may be given or issued
12 by mailing it by first-class mail addressed to the person concerned
13 at his or her last known address.

14 (9) All books and records and other papers and documents
15 relevant to determining any penalty due under this section are
16 subject to inspection during business hours by the department or
17 its authorized agents and employees.

18 (10) For purposes of any provision of state law allowing the
19 department or any other agency of this state to offset an amount
20 owed to a taxpayer against a tax liability of that taxpayer or
21 allowing the department to offset an overpayment of tax against any
22 liability owed to this state, a penalty assessed under this section
23 is considered to be a tax liability of the employer and any refund
24 due to an employer is considered to be an overpayment of tax of the
25 employer.

26 (11) Except as provided in this subsection, all information
27 received by the department from returns filed by an employer or

1 from any investigation conducted under this act are confidential
2 and exempt from disclosure under the freedom of information act,
3 1976 PA 442, MCL 15.231 to 15.246. The information may be used for
4 official purposes within the department or pursuant to official
5 procedures for collecting fines assessed under this act. This
6 subsection does not prohibit the director from publishing or making
7 available to the public reasonable statistics concerning the
8 operation of this act wherein the contents of returns are grouped
9 into aggregates in a way that the specific information of any
10 employer is not disclosed. This subsection does not prohibit the
11 director from divulging information to an authorized representative
12 of the employer or to any person pursuant to a request or
13 authorization made by the employer or by an authorized
14 representative of the employer.

15 (12) Civil fines collected under this act and fees collected
16 under subsection (13) must be deposited into the general fund of
17 this state. The department may, subject to appropriation, use money
18 in the fund to cover expenses it incurs in performing its duties
19 under this act.

20 (13) The department may charge the board a reasonable fee for
21 its costs in performing its duties under this section to the extent
22 that the costs have not been recovered from fines imposed under
23 this section.

24 (14) This section applies 9 months after the board notifies
25 the director that the program has been implemented. On receipt of
26 notification from the board, the department shall immediately post
27 on its Internet website a notice stating the date that this section

1 becomes operative. The notice must include a statement that as an
2 alternative to enrolling employees in the program, employers may
3 sponsor an arrangement, including, but not limited to, a defined
4 benefit plan, 401(k) plan, Simplified Employee Pension Plan (SEP),
5 Savings Incentive Match Plan for Employees (SIMPLE) plan, or
6 automatic payroll deduction IRA offered through a private provider.
7 The board shall provide a link to the vendor Internet website
8 described in section 14(10).

9 Sec. 20. The department in consultation with the board shall
10 promulgate, in accordance with the administrative procedures act of
11 1969, 1969 PA 306, MCL 24.201 to 24.328, any rules that may be
12 necessary to implement this act.

13 Sec. 21. If the board does not obtain adequate money to
14 implement the program within the time frame set forth under section
15 14, the board may delay the implementation of the program and the
16 dates that sections dependent on an operating program begin to
17 apply must be correspondingly extended.

18 Sec. 22. The board shall request in writing an opinion or
19 ruling from the appropriate entity with jurisdiction over the
20 federal employee retirement income security act of 1974, Public Law
21 93-406, regarding the applicability of that act to the program. The
22 board shall not implement the program if the IRA arrangements
23 offered under the program fail to qualify for the favorable federal
24 income tax treatment ordinarily accorded to IRAs under the internal
25 revenue code or if it is determined that the program is an employee
26 benefit plan and state or employer liability is established under
27 the federal employee retirement income security act of 1974, Public

1 Law 93-406.

2 Enacting section 1. This act takes effect 90 days after the
3 date it is enacted into law.