

# ASSEMBLY, No. 2425

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

**Sponsored by:**

**Assemblyman DANIEL R. BENSON**  
**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Requires certain employers to provide certain pre-tax transportation fringe benefits.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning pre-tax transportation fringe benefits, and  
2 amending and supplementing P.L.1992, c.32.

3

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

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7 1. Section 3 of P.L.1992, c.32 (C.27:26A-3) is amended to read  
8 as follows:

9 3. As used in this amendatory and supplementary act:

10 "Alternative means of commuting" means travel between a  
11 person's place of residence and place of employment or termini near  
12 those places, other than in a motor vehicle occupied by one person.  
13 Alternative means of commuting include, but are not limited to,  
14 public transportation, car pools, van pools, bus pools, ferries,  
15 bicycling, telecommuting, and walking, which may be used in  
16 conjunction with such strategies as flextime, staggered work hours,  
17 compressed work weeks, and like measures.

18 "Clean Air Act" means the federal Clean Air Act, as amended by  
19 Pub.L.101-549 (42 U.S.C. s. 7401 et seq.) and as subsequently  
20 amended or supplemented.

21 "Commissioner" means the Commissioner of Transportation.

22 "Commuter transportation benefit" means the cost to employers  
23 of providing benefits to an employee for utilizing an alternative  
24 means of commuting and the cost of providing services and  
25 facilities which would encourage or facilitate use by employees of  
26 alternative means of commuting. The benefit shall include the costs  
27 of parking by employees at park-and-ride lots.

28 "Department" means the New Jersey Department of  
29 Transportation.

30 "Employee" **【**means an employee hired or employed by the  
31 employer and who reports to the employer's work location, as  
32 specified by regulation of the department**】** shall have the same  
33 meaning as provided in the "unemployment compensation law,"  
34 (R.S.43:21-1 et seq.).

35 "Employer" **【**means any person, partnership, association,  
36 corporation, trust, legal representative or any organized group of  
37 persons which hires or employs employees and shall also include all  
38 public and quasi-public employers, including without limitation the  
39 United States and any of its governmental instrumentalities, the  
40 State of New Jersey and its instrumentalities and subdivisions, and  
41 all State and bi-State authorities, corporations, commissions, boards  
42 and like bodies**】** shall have the same meaning as provided in the  
43 "unemployment compensation law," (R.S.43:21-1 et seq.).

44 "Pre-tax transportation fringe benefit" means a pre-tax election  
45 transportation fringe benefit that provides commuter highway

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

**Matter underlined thus is new matter.**

1 vehicle and transit benefits, consistent with the provisions and  
2 limits of section 132(f)(1) of the United States Internal Revenue  
3 Code of 1986 (26 U.S.C. s.132(f)(1)) at the maximum benefit levels  
4 allowable under federal law, to be deducted for those programs  
5 from an employee's gross income pursuant to section 132(f)(2) of  
6 the United States Internal Revenue Code of 1986 (26 U.S.C.  
7 s.132(f)(2)).

8 "Program" means the Travel Demand Management Program  
9 established pursuant to section 5 of P.L.1992, c.32 (C.27:26A-5)  
10 and continued pursuant to P.L.1996, c.121 (C.27:26A-4.1 et al.).

11 "Transportation management association" or "TMA" means a  
12 nonprofit corporation approved by the department as coordinating  
13 transportation services, including but not limited to public  
14 transportation, van pools, car pools, bicycling, and pedestrian  
15 modes, as well as strategies such as flex time, staggered work  
16 hours, and compressed work weeks, for corporations, employees,  
17 developers, individuals, and other groups.

18 "Travel demand management" or "TDM" means a system of  
19 actions whose purpose is to alleviate traffic-related problems  
20 through improved management of vehicle trip demand. These  
21 actions, which are primarily directed at commuter travel, are  
22 structured to reduce the dependence on and use of single occupancy  
23 vehicles, or to alter the timing of travel to other, less congested time  
24 periods or both.

25 (cf: P.L.1996, c.121, s.5)

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27 2. (New section) a. Every employer in the State of New Jersey  
28 that employs at least 20 persons shall offer to all of that employer's  
29 employees, that are not covered by a collective bargaining  
30 agreement, the opportunity to utilize a pre-tax transportation fringe  
31 benefit.

32 b. If an employer employs persons covered by a collective  
33 bargaining agreement and employs less than 20 employees who are  
34 not covered by the collective bargaining agreement, the employer  
35 shall not be required to provide the opportunity to utilize a pre-tax  
36 transportation fringe benefit.

37 c. If an employee is employed by the federal government and  
38 that employee is eligible for a benefit through the person's  
39 employment with the federal government for a transit benefit that is  
40 equal to or greater than a pre-tax transportation fringe benefit, then  
41 the federal government shall not be required to provide those  
42 employees the opportunity to utilize a pre-tax transportation fringe  
43 benefit.

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45 3. (New section) Any employer found to be in violation of the  
46 requirement provided in section 2 of P.L. , c. (C. ) (pending  
47 before the Legislature as this bill) shall be liable for a civil penalty  
48 of not less than \$100 and not more than \$250 for a first violation.

1 An employer shall have 90 days to offer a pre-tax transportation  
2 fringe benefit before the civil penalty is imposed. After 90 days,  
3 each additional 30 day period in which an employer fails to offer a  
4 pre-tax transportation fringe benefit shall constitute a subsequent  
5 violation and a civil penalty of \$250 shall be imposed for each  
6 subsequent violation. A civil penalty shall not be imposed on any  
7 individual employer more than once in any 30 day period. Any  
8 penalty incurred under this section may be recovered with costs,  
9 and, if applicable, interest charges, in a summary proceeding  
10 pursuant to the "Penalty Enforcement Law of 1999" P.L.1999,  
11 c.274 (C.2A:58-10 et seq.).

12 The Commissioner of Labor and Workforce Development shall  
13 ensure compliance with the requirement provided in section 2 of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill)  
15 and may issue citations for violations as provided for in this section.  
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17 4. (New section) The New Jersey Transit Corporation shall  
18 conduct a public awareness campaign in conjunction with the New  
19 Jersey Turnpike Authority and the South Jersey Transportation  
20 Authority, encouraging the public to contact employers about pre-  
21 tax transportation fringe benefits. The campaign shall include signs  
22 in public buildings and on roadways of the New Jersey Turnpike  
23 Authority and the South Jersey Transportation Authority, as well as  
24 the New Jersey Transit Corporation's stations and terminals, and  
25 may also include public service announcements on radio, television,  
26 and the websites and social media of the New Jersey Transit  
27 Corporation, New Jersey Turnpike Authority, and the South Jersey  
28 Transportation Authority.  
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30 5. (New section) The Commissioner of Labor and Workforce  
31 Development, pursuant to the "Administrative Procedure Act,"  
32 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and  
33 regulations, in consultation with TMAs, transit agencies in the  
34 State, and third-party transit benefit providers concerning the  
35 administration and enforcement of the pre-tax transportation fringe  
36 benefit requirements of P.L. , c. (C. ) (pending before the  
37 Legislature as this bill) in a manner that is most compatible with  
38 current practices for providing pre-tax transportation fringe  
39 benefits.  
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41 6. This act shall take effect immediately but shall remain  
42 inoperative for 365 days following the date of enactment or upon  
43 the effective date of rules and regulations adopted pursuant to  
44 section 5 of this act, whichever occurs first.

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STATEMENT

This bill requires every employer in New Jersey that employs at least 20 persons, not subject to a collective bargaining agreement, to offer a pre-tax transportation fringe benefit to all of the employer's employees that are not subject to a collective bargaining agreement. The federal government is only required to provide the benefit to federal employees that are not already eligible for a transit benefit equal to or greater than the pre-tax transportation fringe benefit. A pre-tax transportation fringe benefit is a benefit that allows an employee to set aside wages on a pre-tax basis, which is then only made available to the employee for the purchase of certain eligible transportation services, including transit passes and commuter highway vehicle travel. The employer is not required to offer a qualified parking or bicycle benefit, but may offer those benefits.

The bill also establishes a \$100 to \$250 penalty for the first time any employer is found to be in violation of this requirement. An employer has 90 days from the date of the violation to offer the pre-tax transportation fringe benefit program before the fine is imposed. After 90 days, each additional 30 day period in which an employer fails to offer a pre-tax transportation fringe benefit is a subsequent violation subject to a \$250 penalty. The penalty is to be imposed only once in any 30 day period. The Commissioner of Labor and Workforce Development is authorized to ensure that employers provide the pre-tax transportation fringe benefit if required and issue citations for failure to comply with the requirement.

The bill also requires the New Jersey Transit Corporation to establish a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority. The campaign is to encourage the public to contact employers about pre-tax transportation fringe benefits.

Pre-tax transportation fringe benefits can be offered directly by employers or through third party providers. The federal benefit levels available for 2017 are \$255 per month and are subject to cost-of-living adjustments by the federal Internal Revenue Service for transit passes and commuter highway vehicle travel. The transportation fringe benefit is not subject to payroll tax for the employer or the employee, allowing both the employer and employee to reduce their federal tax payments.