

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4134

**STATE OF NEW JERSEY**

DATED: OCTOBER 15, 2018

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 4134.

This bill establishes the “New Jersey Secure Choice Savings Program” (program), a retirement savings program in the form of an automatic enrollment payroll deduction Individual Retirement Account (IRA) for certain private sector employees. The program promotes retirement savings for private sector employees employed by “employers” and “small employers,” as defined by the bill, in a convenient, low cost, and portable manner.

The bill defines “employer” as a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that has at no time during the previous calendar year employed fewer than 25 employees in the State, has been in business at least two years, and 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 of 1986 in the preceding two years. The term “employer” does not mean the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or of its political subdivisions, or any public body in the State. A “small employer,” is defined in the bill as a person or entity engaged in a business, industry, profession, trade, or other enterprise in New Jersey, whether for profit or not for profit, that employed less than 25 employees at any one time in the State throughout the previous calendar year, or has been in business less than two years, or both, but that notifies the Department of the Treasury that it is interested in being a participating employer. The bill defines “employee” as any individual who is 18 years of age or older, who lives in this State or is employed by an employer in this State, and whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.

The bill creates the New Jersey Secure Choice Savings Program Fund (fund) which will consist of funds received from enrollees in the program and participating employers, and is separate and apart from all public moneys or funds of this State. The bill provides that

amounts deposited in the fund shall not constitute property of the State, the fund shall not be construed to be a department, institution, or agency of the State, and that amounts deposited in the fund shall not be commingled with State funds.

The bill creates the New Jersey Secure Choice Savings Board (board) to implement the program and oversee the fund. The bill also creates the New Jersey Secure Choice Administrative Fund as a nonappropriated separate and apart trust fund in the General Fund, to be used to pay administrative expenses incurred by the board in the performance of its duties hereunder. The administrative fund may receive any grants or other moneys designated for administrative purposes from the State, or any federal or local government, or other person, firm, partnership, or corporation.

The bill sets forth the method by which the members of the board will be appointed and by whom. The board will consist of the following seven members: the State Treasurer, or his or her designee, who shall serve as chair; the State Comptroller, or his or her designee; the Director of the Office of Management and Budget, or the director's designee; two public representatives with expertise in retirement savings plan administration or investment, or both, of which one is appointed by the Speaker of the General Assembly and one is appointed by the Senate President; a representative of participating employers, and a representative of enrollees, both of whom are appointed by the Governor. Members of the board will serve without compensation. Each appointment to the board by the Governor will be subject to the advice and consent of the Senate.

The bill sets forth several duties of the board with respect to implementing the program, including appointing a fund trustee, governing risk management, determining investment options, entering into contracts necessary for the administration of the program and the fund, employing a staff to support the implementation of the program, and conducting a performance review of any investment vendors. The bill also requires the board to establish a process for enrollment in the program, opting out of participation, selecting a contribution level and investment option, and terminating participation. The bill provides that other duties of the board include accepting grants, appropriations, or other moneys from the State, any unit of federal, State, or local government, or any other person, firm, partnership or corporation for deposit into the fund, whether for investment or administrative purposes, making provisions for the payment of administrative costs and expenses for the creation, management and operation of the program, and keeping annual administrative fees, which include investment fees, as low as possible, but not to exceed 0.6 percent of the fund's total balance. The bill also provides that subject to appropriation, 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.

The bill requires that the program be implemented, and that enrollment of employees begin, within 24 months after the effective date of the bill. No later than nine months after program implementation and the opening of enrollment, each employer covered by the bill must establish a payroll deposit retirement savings arrangement to allow its employees to participate in the program. An employer will automatically enroll in the program each of its employees who has not opted out of participation in the program. The employer will provide payroll deduction retirement savings arrangements for each of its employees and deposit, on behalf of its 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.

The bill requires that employers enroll new employees within three months after the date of hire, unless the employee opts out of enrollment. Newly hired employees who have previously been enrolled are permitted to make contributions directly into their accounts, until such time as they are enrolled by their new employer or opt out of enrollment in the program.

The bill provides that employees have the ability to select a contribution level, and may change their contribution level no more than once every calendar quarter, subject to rules and regulations promulgated by the board. If an employee fails to select a contribution level, then the default contribution level will be three percent of the employee's wages. Employees may select an investment option from the investment options provided by the board, which shall not offer more than five investment options in any calendar year. Employees may change their investment option no more than once every calendar quarter, subject to the rules and regulations promulgated by the board. If an employee fails to select an investment option, that employee's contributions shall be placed in the default investment option selected by the board. Initially, the life-cycle fund will be the default investment option. Employees may terminate their participation in the program at any time in a manner prescribed by the board.

The bill also provides that, following initial implementation of the program, at least once every year, participating employers must designate an open enrollment period during which employees who previously opted out of the program may enroll in the program. An employee who opts out of the program but subsequently 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 at an earlier time if permitted by the participating employer.

The bill provides 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. The bill requires that any financial

liability for the payment of retirement savings benefits in excess of funds available under the program be borne solely by the entities with whom the board contracts to provide insurance to protect the value of the program. No State entity, board, commission, or agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from particular investments selected under the bill, except for any liability that arises out of a breach of fiduciary duty.

The bill provides that participating employers will 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. A participating employer will not be a fiduciary, or considered to be a fiduciary, over the program. Nor will a participating employer bear responsibility for the administration, investment, or investment performance of the program. A participating employer will not be liable with regard to investment returns, program design, and benefits paid to program participants.

The bill establishes penalties for employers who, without reasonable cause, fail to enroll employees who have not opted out of participation in the program. Those employers are subject to: for the first calendar year during which at any point a violation occurs, a written warning by the department; for the second calendar year during which at any point a violation occurs, a fine of \$100; for the third and fourth calendar year during which at any point a violation occurs, a fine of \$250 for each employee who was neither enrolled in nor opted out of participation in the program; and for the fifth and any subsequent calendar year during which at any point a violation occurs, a fine of \$500 for each employee who was neither enrolled in nor opted out of participation in the program. The bill also provides that an employer who collects employee contributions but fails to remit any portion of the contributions to the fund shall be subject to a penalty of \$2,500 for a first offense, and \$5,000 for the second and each subsequent offense.

The bill provides that the Department of the Treasury require employers to report information relevant to their compliance with this act on their State income tax return, but the tax return will not be treated as unprocessable for tax purposes if the employer fails to provide the requested compliance information. The bill also provides that a penalty assessed under the provisions of the bill shall be deemed to be a tax liability of the employer for purposes of any State law allowing the department or other agency of the 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.

Finally, the bill provides that if the board does not obtain adequate funds to implement the program within the time frame set forth by the bill, the board may delay the implementation of the program. The

board must request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal "Employee Retirement Income Security Act of 1974" (29 U.S.C. s.1001 et seq.) regarding the applicability of that 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 "Employee Retirement Income Security Act of 1974."