

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4134

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4134, with committee amendments.

As amended, Assembly Bill No. 4134 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.

“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 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 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. 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 requires the board to establish a process for enrollment in the program, opting out of participation, selecting a contribution level and investment options, and terminating participation.

The bill also requires, no later than nine months after program implementation and the opening of enrollment, that 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. 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.

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.

COMMITTEE AMENDMENTS:

The committee amendments:

1) require that the appointments of the two representatives of the general public to the New Jersey Secure Choice Savings Board be made in consultation with organizations representing business, including the securities and investment industries;

2) permit administrative fees of the program, during its first three years, to be 0.75 percent of the fund's total balance;

3) permit the board to establish a capital preservation fund, and any other investment option it deems appropriate, however, the provision permitting no more than five investment options in any calendar year remains;

4) eliminate the provision that enrollees may change their investment option no more than once every calendar quarter and instead require the board to set specifications regarding how frequently enrollees may change investment options;

5) expressly state that the program is not an employer-sponsored plan, and that the employer's responsibility is limited to the responsibilities specifically enumerated in the bill;

6) clarify that all of the reports required by the bill be submitted to the Governor, Legislature, and the department, which is required to make the reports available on its Internet website;

7) remove the requirement that the program not be implemented if the IRA arrangements fail to qualify for the 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 ERISA; and

8) provide that if any part of the bill is judged to be invalid, other parts of the bill will not be affected.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill will result in an indeterminate increase in State administrative expenditures for the Department of the Treasury, tied to start-up and initial implementation of the state-sponsored Individual Retirement Accounts by the New Jersey Secure Choice Savings Board, which is established under the bill.

The costs incurred by New Jersey Secure Choice Savings Board to administer the program, and the administrative fees charged to employees participating in the program, comprise an indeterminate annual increase in State expenditures and revenue. The extent to which administrative fee revenue equals or exceeds administrative costs in any given fiscal year cannot be predicted.

The OLS also notes that the bill will result in an indeterminate State revenue increase equal to the penalty payments by employers who do not comply with the provisions of the bill.