

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4134

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2019

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 4134 (1R), with committee amendments.

This bill, as amended, establishes the “New Jersey Secure Choice Savings 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 defines “employee” as any individual who is 18 years of age or older, who is living or employed in this State, and whose wages are subject to State income tax withholding.

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, that the Fund shall not be construed to be an 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 to implement the program and oversee the fund. The bill also creates the New Jersey Secure Choice Administrative Fund as a non-appropriated separate and apart trust fund in the General Fund, to be used to pay administrative expenses incurred by the board. The administrative fund may receive 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. 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 designated open enrollment period, or earlier if permitted by the employer.

The bill provides that the State has no duty or liability to any party for the payment of any retirement savings benefits 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 investments selected under the bill.

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 considered to be a fiduciary of the program. No participating employer will bear responsibility for the administration, investment, or investment performance of the program. No employer will be liable with regard to investment returns, program design, or program benefits.

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 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 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. 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 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.

The bill requires the board to establish and maintain an internet website designed to make available to employers, employees, and members of the general public the employee information packet, the

employer information packet, all required reports, and any other reports, documents or information deemed appropriate by the board.

The bill provides that the treasury shall make available to the public on its Internet website all reports provided to the department required by the bill.

As amended and reported, this bill is identical to Senate Bill No. 2891 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) Clarify under the definition of employee that for purposes of the bill, an employee who is co-employed by an employee leasing company or professional employer organization and a client company pursuant to an employee leasing agreement or professional employer agreement, shall be treated as employed by the client company and not by the employee leasing company or professional employer organization;

(2) Clarify under the definition of employer that employer includes 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 or a plan sponsored by an employee leasing company or professional employer organization with which the employer has an employee leasing agreement or professional employer agreement;

(3) Clarify under the definition of wages that wages includes any compensation that is received by an enrollee from a participating employer 2or employee leasing company or professional employer organization with which the enrollee's employer has an employee leasing agreement or professional employer agreement;

(4) Clarify that the New Jersey Secure Choice Administrative Fund is created as a nonappropriated separate and apart trust fund outside of the General Fund in the Department of the Treasury, to be used exclusively for the purpose of the bill;

(5) Modify the method of selection of members to the New Jersey Secure Choice Savings Board;

(6) Clarify that the board's responsibility to facilitate education and outreach to employers and employees includes the promotion of the benefits of retirement savings and other information that promote financial literacy necessary for sound financial decision-making;

(7) Modify the investment options available to the board for the program;

(8) Require the board to establish and maintain an internet website designed to make available to employers, employees, and members of the general public the employee information packet, the employer

information packet, all required reports, and any other reports, documents or information deemed appropriate by the board;

(9) Clarify that the program shall be implemented, and enrollment of employees shall begin, within 24 months after the effective date of this act, but that the board may extend the time period within which the program is implemented and enrollment of employees begins, but not by more than 12 months, and that the board shall implement the program in two phases based on the size of the employers participating;

(10) Clarify that employee contributions deducted by the participating employer through payroll deduction, less any amount withheld for State income tax pursuant to regulations adopted by the board in consultation with the department, shall be paid by the participating employer to the fund before the deadline established those regulations, using one or more payroll deposit retirement savings arrangements established by the board;

(11) Provide that the treasury shall make available to the public on its Internet website all reports provided to the department required by the bill; and

(12) Provide that notwithstanding the provisions of any other law to the contrary, assets in an individual's account under the program shall not be regarded as assets for determining eligibility for benefits or the amount of benefits to be provided pursuant to any State or federal law.

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 state-sponsored Individual Retirement Accounts (IRAs) by the New Jersey Secure Choice Savings Board, which is established under the bill.

- The costs incurred by the 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 may exceed or fall short of 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.