STATE OF NEW YORK

6115

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the secure choice savings program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1301 of the general business law, as added by section 2 of part X of chapter 55 of the laws of 2018, is amended to read as follows:

§ 1301. Program established. There is hereby established a retirement savings program in the form of [~~a~~] **an automatic enrollment** payroll deduction IRA, known as the New York state secure choice savings program. The general administration and responsibility for the proper operation of the program shall be administered by the board for the purpose of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner. The board may delegate such authority and responsibility for the development and implementation of the program to the department of taxation and finance as the board deems proper.

§ 2. Subdivision 9 of section 1304 of the general business law, as added by section 2 of part X of chapter 55 of the laws of 2018, is amended to read as follows:

9. Evaluate and establish or authorize the process for enrollment including the process by which an employee may **opt not to** participate in the program, select a contribution level, select an investment option, and terminate participation in the program.

§ 3. Subdivisions 3, 4 and 5 of section 1309 of the general business law, as added by section 2 of part X of chapter 55 of the laws of 2018, are amended to read as follows:

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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3. The employee informational materials shall include a disclosure form. The disclosure form shall explain, but not be limited to, all of the following:

(a) the benefits and risks associated with making contributions to the program;

(b) the process for making contributions to the program;

(c) how to [~~cease participation in~~] **opt out of** the program;

(d) the process by which an employee can participate in the program with a level of employee contributions other than three percent;

(e) that they are not required to participate or contribute more than three percent;

(f) the process for withdrawal of retirement savings;

(g) the process for selecting beneficiaries of their retirement savings;

(h) how to obtain additional information about the program;

(i) that employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to this article;

(j) information on how to access any available financial literacy programs; [~~and~~]

(k) that the program fund is not guaranteed by the state**;**

(l) that they can opt out after they have been enrolled.

4. The employee informational materials shall also include a form for an employee to note his or her decision [~~regarding~~] **to opt out of** participation in the program or [~~election~~] **elect** to participate with a level of employee contributions other than three percent.

5. Participating employers shall supply the employee informational materials to existing employees at least one month prior to the participating employers' facilitation of access to the program. Participating employers shall supply the employee informational materials to new employees at the time of hiring **and new employees may opt out of participation in the program**.

§ 4. Subdivision 1 of section 1313 of the general business law, as added by section 2 of part X of chapter 55 of the laws of 2018, is amended to read as follows:

1. Participating employers shall not have any liability for an employee's decision regarding whether to participate in**, or opt out of,** the program or for the investment decisions of the board or of any enrollee.

§ 5. Subdivision 1 of section 1310 of the general business law, as added by section 2 of part X of chapter 55 of the laws of 2018, is amended to read as follows:

1. [~~No employer shall be required to participate in or otherwise implement the program.~~] **(a) Each participating employer shall establish a payroll deduction IRA to allow each employee to participate in the program at most nine months after the board opens the program for enrollment.**

(b) Participating employers shall automatically enroll in the program each of their employees who has not opted out of participation in the program using the form described in this article and shall provide payroll deduction retirement savings arrangements for such employees and deposit, on behalf of such employees, these funds into the program. Small employers with less than ten employees may, but are not required to, opt into the program.

§ 6. Subdivisions 4 and 8 of section 1300 of the general business law, as added by section 2 of part X of chapter 55 of the laws of 2018, are amended and a new subdivision 10-a is added to read as follows:

4. "Employer" shall mean a person or entity engaged in a business, industry, profession, trade, or other enterprise in New York state, whether for profit or not for profit, that **(i) has at all times during the previous calendar year employed at least ten employees in the state, (ii) has been in business at least two years, and (iii)** has not offered a qualified retirement plan, including, but not limited to, a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code of 1986 in the preceding two years.

8. "Participating employer" shall mean an employer **or small employer** that [~~elects to facilitate~~] **facilitates** access to the program's payroll deduction IRA as provided for by this article for its employees who are enrollees in the program.

10-a. "Small employer" shall mean a person or entity engaged in a business, industry, profession, trade, or other enterprise in New York state, whether for profit or not for profit, that (i) employed less than ten employees at any one time in the state throughout the previous calendar year, or (ii) has been in business less than two years, or both paragraphs (i) and (ii), but that notifies the comptroller that it is interested in being a participating employer.

§ 7. This act shall take effect immediately.