

# STATE OF NEW YORK

5758

2021-2022 Regular Sessions

## IN ASSEMBLY

February 24, 2021

Introduced by M. of A. BARCLAY, SALKA, LEMONDES, LAWLER, DeSTEFANO,  
J. M. GIGLIO -- Multi-Sponsored by -- M. of A. BROWN, MANKTELOW --  
read once and referred to the Committee on Small Business

AN ACT to amend the state finance law and the tax law, in relation to  
the establishment of the small business child and dependent care  
savings program

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

1 Section 1. The state finance law is amended by adding a new article 17  
2 to read as follows:

### ARTICLE 17

#### NEW YORK STATE SMALL BUSINESS CHILD AND DEPENDENT CARE SAVINGS PROGRAM

##### Section 255. Short title.

##### 256. Definitions.

##### 257. Program established.

##### 258. Program administration.

##### 259. Program implementation and enrollment.

##### 260. Payments.

##### 261. Duty and liability of the state.

##### 262. Duty and liability of participating employers.

##### 263. Delayed implementation.

14 § 255. Short title. This act shall be known and may be cited as the  
15 "New York small business child and dependent care savings program act".

16 § 256. Definitions. The following terms shall have the following mean-  
17 ings:

18 1. "Commissioner" shall mean the commissioner of labor.

19 2. "Comptroller" shall mean the comptroller of the state.

20 3. "Employee" shall mean any individual who is eighteen years of age  
21 or older, who is employed by an employer, and who earned wages working  
22 for an employer in New York state during a calendar year.

23 4. "Employer" shall mean a person or entity engaged in a business,  
24 industry, profession, trade, or other enterprise in New York state,  
25 whether for profit or not for profit, that (a) has at all times during  
26 the previous calendar year employed at least one but not more than one

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

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1 hundred employees in the state, (b) has been in business at least two  
2 years, and (c) has not offered a child and dependent care savings plan.

3 5. "Enrollee" shall mean any employee who is enrolled in the program.

4 6. "Fund" shall mean the New York small business child and dependent  
5 care savings program fund.

6 7. "Participating employer" shall mean a small business that provides  
7 a payroll child and dependent care savings arrangement as provided for  
8 by this article for its employees who are enrollees in the program.

9 8. "Payroll deposit child and dependent care savings arrangement"  
10 shall mean an arrangement by which a participating employer allows  
11 enrollees to remit payroll deduction contributions to the program.

12 9. "Program" shall mean the New York state small business child and  
13 dependent care savings program.

14 10. "Small business" shall mean a person or entity engaged in a busi-  
15 ness, industry, profession, trade, or other enterprise in New York  
16 state, whether for profit or not for profit, that employed at least one  
17 but no more than one hundred employees at any one time in the state  
18 throughout the previous calendar year, and that notifies the comptroller  
19 that it is interested in being a participating employer.

20 11. "Wages" means any compensation received by an enrollee from a  
21 participating employer during the calendar year.

22 12. "Internal revenue code" shall mean the internal revenue code of  
23 nineteen hundred eighty-six, or any successor law, in effect for the  
24 calendar year.

25 13. "Administrators" shall mean the commissioner of labor together  
26 with the comptroller.

27 § 257. Program established. A state child and dependent care savings  
28 program in the form of payroll deduction, known as the New York state  
29 small business child and dependent care program, is hereby established  
30 for the purpose of promoting greater child and dependent care savings  
31 for private-sector employees of small businesses in a convenient, low-  
32 cost, and portable manner.

33 § 258. Program administration. The administration of the program shall  
34 be overseen by both the comptroller and the commissioner. The adminis-  
35 trators are authorized and directed to establish a flexible benefits  
36 program consistent with sections one hundred twenty-five and one hundred  
37 twenty-nine of the internal revenue code and regulations adopted pursu-  
38 ant thereto. The administrative duties and responsibilities are as  
39 follows:

40 1. Cause the program to be designed, established and operated in a  
41 manner that:

42 (a) maximizes participation and savings;

43 (b) maximizes simplicity, including ease of administration for partic-  
44 ipating employers and enrollees;

45 2. Determine the number and duties of staff members needed to adminis-  
46 ter the program and assemble such staff, including, as needed, employing  
47 staff and appointing a program administrator.

48 3. Evaluate and establish the process by which an enrollee is eligible  
49 to contribute a portion of his or her wages to the program for automatic  
50 deposit and the process by which the participating employer provides a  
51 payroll deposit child and dependent care savings arrangement to forward  
52 those contributions and related information to the program, including,  
53 but not limited to, contracting with financial service companies and  
54 third-party administrators with the capability to receive and process  
55 employee information and contributions for payroll deposit child and  
56 dependent care savings arrangements or similar arrangements.

1 4. Design and establish the process for enrollment including the proc-  
2 ess by which an employee can opt not to participate in the program,  
3 select a contribution amount or terminate participation in the program.

4 5. Evaluate and establish the processes by which an employee may  
5 voluntarily enroll in and make contributions to the program.

6 6. Set minimum and maximum contribution levels in accordance with  
7 limits.

8 7. Facilitate education and outreach to employers and employees.

9 8. Carry out the duties and obligations of the program in an effec-  
10 tive, efficient, and low-cost manner.

11 9. Exercise any and all other powers reasonably necessary for the  
12 effectuation of the purposes, objectives, and provisions of this arti-  
13 cle.

14 10. Determine withdrawal provisions, such as economic hardships,  
15 portability and leakage.

16 § 259. Program implementation and enrollment. Except as otherwise  
17 provided in this article, the program shall be implemented, and enroll-  
18 ment of employees shall begin, within twelve months after the effective  
19 date of this article. The provisions of this section shall be in force  
20 at such time as the program administrators open the program for enroll-  
21 ment.

22 1. Each participating employer shall establish a payroll deposit child  
23 and dependent care savings arrangement to allow each employee to partic-  
24 ipate in the program after the program administrators open the program  
25 for enrollment.

26 2. Enrollees shall have the ability to select a contribution level to  
27 the fund. This level may be expressed as a percentage of wages or as a  
28 dollar amount. Enrollees may change their contribution level at any  
29 time, subject to rules promulgated by the program administrators.

30 3. Following initial implementation of the program pursuant to this  
31 section, at least once every year, participating employers shall desig-  
32 nate an open enrollment period during which employees who previously  
33 opted out of the program may enroll in the program.

34 4. An employee who opts out of the program and who subsequently wants  
35 to participate through the participating employer's payroll deposit  
36 child and dependent care savings arrangement may only enroll during the  
37 participating employer's designated open enrollment period or if permit-  
38 ted by the participating employer at an earlier time.

39 5. Employers shall retain the option, at all times, to set up any type  
40 of employer-sponsored child and dependent care savings plan instead of  
41 having a payroll deposit child and dependent care savings arrangement  
42 such that employees are allowed to participate in the program.

43 6. An enrollee may terminate his or her participation in the program  
44 at any time in a manner prescribed by the program administrators.

45 7. To the extent permitted by section one hundred twenty-five of the  
46 internal revenue code and regulations adopted pursuant thereto, and  
47 salary deferred by an employee as defined in subdivision three of  
48 section two hundred fifty-six of this article under a flexible benefits  
49 program established pursuant to this article shall be considered part of  
50 annual compensation for the purpose of computing retirement benefits.

51 § 260. Payments. Employee contributions deducted by the participating  
52 employer through payroll deduction shall be paid by the participating  
53 employer to the fund using one or more payroll deposit child and depend-  
54 ent care savings arrangements established by the administrator under  
55 this article, either:

1 1. on or before the last day of the month following the month in which  
2 the compensation otherwise would have been payable to the employee in  
3 cash; or

4 2. before such later deadline prescribed by the administrator for  
5 making such payments, but not later than the due date for the deposit of  
6 tax required to be deducted and withheld relating to collection of  
7 income tax at source on wages or for the deposit of tax required to be  
8 paid under the unemployment insurance system for the payroll period to  
9 which such payments relate.

10 § 261. Duty and liability of the state. 1. The state shall have no  
11 duty or liability to any party for the payment of any child and depend-  
12 ent care savings benefits accrued by any enrollee under the program. Any  
13 financial liability for the payment of child and dependent savings bene-  
14 fits in excess of funds available under the program shall be borne sole-  
15 ly by the entities with whom the program administrators contract to  
16 provide insurance to protect the value of the program.

17 § 262. Duty and liability of participating employers. 1. Participat-  
18 ing employers shall not have any liability for the decision of an  
19 employee to participate in or opt out of the program.

20 2. A participating employer shall not be a fiduciary, nor considered  
21 to be, a fiduciary over the program. A participating employer shall not  
22 bear responsibility for the administration of the program. A partic-  
23 ipating employer shall not be liable for program design and benefits  
24 paid to program participants.

25 § 263. Delayed implementation. If the program administrators do not  
26 obtain adequate funds to implement the program within the time frame set  
27 forth under this article or such funds are subject to appropriation, the  
28 program administrators may delay the implementation of the program.

29 § 2. The state finance law is amended by adding a new section 99-ii to  
30 read as follows:

31 § 99-ii. New York state small business child and dependent care  
32 program fund. 1. There is hereby established within the joint custody of  
33 the commissioner of taxation and finance and the state comptroller, a  
34 new fund to be known as the New York state small business child and  
35 dependent care program fund.

36 2. The fund shall include the child and dependent care savings  
37 accounts of enrollees, which shall be accounted for as individual  
38 accounts.

39 3. Moneys in the fund shall consist of moneys received from enrollees  
40 and participating employers pursuant to automatic payroll deductions and  
41 contributions to savings made under the New York state small business  
42 child and dependent care program.

43 4. The fund shall be operated in a manner determined by the adminis-  
44 trators of the New York state small business child and dependent care  
45 savings program.

46 5. The amounts deposited in the fund shall not constitute property of  
47 the state and the fund shall not be construed to be a department, insti-  
48 tution, or agency of the state. Amounts on deposit in the fund shall not  
49 be commingled with state funds and the state shall have no claim to or  
50 against, or interest in, such funds.

51 § 3. Subsection (c) of section 612 of the tax law is amended by adding  
52 a new paragraph 44 to read as follows:

53 (44) Any payroll deduction for child and dependent care services,  
54 pursuant to article seventeen of the state finance law.

55 § 4. This act shall take effect immediately.