

STATE OF NEW YORK

9882--A

IN ASSEMBLY

April 19, 2022

Introduced by M. of A. STIRPE, McDONALD, ENGLEBRIGHT, DICKENS, LUPARDO, REYES, HEVESI, BURGOS, GLICK, SIMON -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Section 1300 of the general business law, as added by
2 section 2 of part X of chapter 55 of the laws of 2018 and subdivisions 4
3 and 8 as amended by chapter 452 of the laws of 2021, is amended to read
4 as follows:

5 § 1300. Definitions. All terms shall have the same meaning as when
6 used in a comparable context in the Internal Revenue Code. As used in
7 this article, the following terms shall have the following meanings:

8 1. "Board" shall mean the New York secure choice savings program board
9 established under this article.

10 2. "Superintendent" shall mean the superintendent of the department of
11 financial services.

12 2-a. "Commissioner" shall mean the commissioner of taxation and
13 finance.

14 2-b. "Comptroller" shall mean the comptroller of the state.

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

18 4. "Employer" shall mean a person or entity engaged in a business,
19 industry, profession, trade, or other enterprise in New York state,
20 whether for profit or not for profit, that (i) has at all times during
21 the previous calendar year employed at least ten employees in the state,
22 (ii) has been in business at least two years, and (iii) has not offered
23 a qualified retirement plan, including, but not limited to, a plan qual-
24 ified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or
25 457(b) of the Internal Revenue Code of 1986 in the preceding two years.

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

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1 5. "Enrollee" shall mean any employee or participating individual who
2 is enrolled in the program.

3 6. "Internal Revenue Code" shall mean the Internal Revenue Code of
4 1986, or any successor law, in effect for the calendar year.

5 7. "IRA" shall mean a Roth IRA (individual retirement account).

6 8. "Participating employer" shall mean an employer that facilitates
7 access to the program's payroll deduction IRA as provided for by this
8 article for its employees who are enrollees in the program.

9 9. "Participating individual" means any individual who is eighteen
10 years of age or older and has New York taxable income as defined in
11 section six hundred eleven of the tax law within a calendar year, who
12 enrolls in the program independent of an employment relationship with an
13 eligible employer, maintains an account in the program, and is not a
14 participating employee.

15 10. "Payroll deduction IRA" shall mean an arrangement by which a
16 participating employer facilitates access for [~~enrollees~~] employees to
17 remit payroll deduction contributions to the program.

18 [~~10.~~] 11. "Program" shall mean the New York state secure choice
19 savings program.

20 [~~11.~~] 12. "Wages" means any compensation within the meaning of section
21 219(f)(1) of the Internal Revenue Code that is received by an enrollee
22 from a participating employer or by a participating individual during
23 the calendar year.

24 § 2. Section 1301 of the general business law, as amended by chapter
25 452 of the laws of 2021, is amended to read as follows:

26 § 1301. Program established. There is hereby established a retirement
27 savings program in the form of an automatic enrollment payroll deduction
28 IRA for private-sector employees and a retirement savings program in the
29 form of a personal IRA as established by the board for participating
30 individuals, known as the New York state secure choice savings program.
31 The general administration and responsibility for the proper operation
32 of the program shall be administered by the board for the purpose of
33 promoting greater retirement savings for private-sector employees and
34 participating individuals in a convenient, low-cost, and portable
35 manner. The board may delegate such authority and responsibility for the
36 development and implementation of the program to the department of tax-
37 ation and finance as the board deems proper.

38 § 3. Section 1303 of the general business law, as added by section 2
39 of part X of chapter 55 of the laws of 2018, is amended to read as
40 follows:

41 § 1303. Fiduciary duty. The board, the individual members of the
42 board, the trustees, any other agents appointed or engaged by the board,
43 and all persons serving as program staff shall discharge their duties
44 with respect to the program solely in the interest of the program's
45 enrollees and beneficiaries as follows:

46 1. for the exclusive purposes of providing benefits to enrollees and
47 beneficiaries and defraying reasonable expenses of administering the
48 program;

49 2. by investing with the care, skill, prudence, and diligence under
50 the prevailing circumstances that a prudent person acting in a like
51 capacity and familiar with those matters would use in the conduct of an
52 enterprise of a like character and with like aims; and

53 3. by using any contributions paid by participating individuals,
54 employees, and employers remitting employees' own contributions into the
55 fund exclusively for the purpose of paying benefits to the enrollees of

1 the program, for the cost of administration of the program, and for
2 investments made for the benefit of the program.

3 § 4. Section 1304 of the general business law, as added by section 2
4 of part X of chapter 55 of the laws of 2018 and subdivisions 7 and 9 as
5 amended by chapter 452 of the laws of 2021, is amended to read as
6 follows:

7 § 1304. Duties of the board. In addition to the other duties and
8 responsibilities stated in this article, the board shall, itself or
9 through the use of appropriate financial organizations as managers:

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

12 (a) accords with best practices for retirement savings vehicles;

13 (b) maximizes participation, savings, and sound investment practices
14 including considering the use of automatic enrollment as allowed under
15 federal law;

16 (c) maximizes simplicity, including ease of administration for partic-
17 ipating employers and enrollees;

18 (d) provides an efficient product to enrollees by pooling investment
19 funds;

20 (e) ensures the portability of benefits; and

21 (f) provides for the deaccumulation of enrollee assets in a manner
22 that provides a financial benefit in retirement.

23 2. Explore and establish or authorize investment options, subject to
24 this article, that offer enrollees returns on contributions and the
25 conversion of individual retirement savings account balances to secure
26 retirement income without incurring debt or liabilities to the state.

27 3. Establish or authorize the process by which interest, investment
28 earnings, and investment losses are allocated to individual program
29 accounts on a pro rata basis and are computed at the interest rate on
30 the balance of an individual's account.

31 4. Make and enter into contracts necessary for the administration of
32 the program and fund, including, but not limited to, retaining and
33 contracting with investment managers, financial organizations, other
34 financial and service providers, consultants, actuaries, counsel, audi-
35 tors, third-party administrators, and other professionals as necessary.

36 5. Conduct a periodic review of the performance of any financial
37 organizations, including, but not limited to, a review of returns, fees,
38 and customer service. A copy of reviews shall be posted to the program's
39 Internet website.

40 6. Cause moneys in the program to be held and invested as pooled
41 investments or otherwise, with a view to achieving cost savings through
42 efficiencies and economies of scale.

43 7. Evaluate and establish or authorize the process for:

44 (a) an [enrollee] employee to contribute a portion of his or her wages
45 to the program via payroll deduction; and

46 (b) the enrollment of participating employers in the program.

47 8. The board may contract with financial organizations and third-party
48 administrators with the capability to receive and process employee
49 information and contributions for payroll deduction IRA or similar
50 arrangements.

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

55 10. Evaluate and establish or authorize the process for the partic-
56 ipation and enrollment of any participating individual.

1 11. Evaluate, or cause to be evaluated, the need for, and procure as
2 needed, insurance against any and all loss in connection with the prop-
3 erty, assets, or activities of the program, and indemnify as needed each
4 member of the board from personal loss or liability resulting from a
5 member's action or inaction as a member of the board.

6 ~~[11.]~~ 12. Make provisions for the payment of administrative costs and
7 expenses for the creation, management, and operation of the program.
8 Subject to appropriation, the state may pay administrative costs associ-
9 ated with the creation and management of the program until sufficient
10 assets are available in the program for that purpose. Thereafter, all
11 administrative costs of the program, including repayment of any start-up
12 funds provided by the state, shall be paid only out of moneys on deposit
13 therein. However, private funds or federal funding received in order to
14 implement the program until it is self-sustaining shall not be repaid
15 unless those funds were offered contingent upon the promise of such
16 repayment. The board shall keep its annual administrative expenses as
17 low as possible.

18 ~~[12.]~~ 13. Allocate administrative fees to individual retirement
19 accounts in the program on a pro rata basis.

20 ~~[13.]~~ 14. Set or authorize minimum and maximum contribution levels in
21 accordance with limits established for IRAs by the Internal Revenue
22 Code.

23 ~~[14.]~~ 15. Facilitate education and outreach to employers and employ-
24 ees~~[.]~~ and facilitate the development of educational materials for
25 participating individuals.

26 ~~[15.]~~ 16. Facilitate compliance by the program with all applicable
27 requirements for the program under the Internal Revenue Code, including
28 tax qualification requirements or any other applicable legal, financial
29 reporting and accounting requirements.

30 ~~[16.]~~ 17. Carry out the duties and obligations of the program in an
31 effective, efficient, and low-cost manner.

32 ~~[17.]~~ 18. Exercise any and all other powers reasonably necessary for
33 the effectuation of the purposes, objectives, and provisions of this
34 article.

35 ~~[18.]~~ 19. Determine or authorize withdrawal provisions, such as
36 economic hardships, portability and leakage.

37 ~~[19.]~~ 20. Determine ~~[employee]~~ enrollee rights and enforcement of
38 penalties.

39 ~~[20.]~~ 21. Delegate such authority and responsibility for the develop-
40 ment and implementation of the program to the department of taxation and
41 finance as the board deems proper.

42 § 5. Section 1309 of the general business law, as added by section 2
43 of part X of chapter 55 of the laws of 2018 and subdivisions 3, 4 and 5
44 as amended by chapter 452 of the laws of 2021, is amended to read as
45 follows:

46 § 1309. Employer and employee and participating individual informa-
47 tional materials and disclosure forms. 1. Prior to the opening of the
48 program for enrollment for employees, the board shall design and dissem-
49 inate, or cause to be designed and disseminated, to all employers
50 employer informational materials and employee informational materials,
51 which shall include background information on the program, and necessary
52 disclosures as required by law for employees.

53 2. Prior to the opening of the program for enrollment for participat-
54 ing individuals, the board shall design and make publicly available
55 informational materials which shall include background information on
56 the program and how to participate as a participating individual.

including but not limited to, information on the benefits and risks associated with making contributions to the program, the process for making contributions, the contribution levels they may contribute, the process for withdrawal of retirement savings, and the process for selecting beneficiaries.

3. The employee and participating individual informational materials shall be made available in English, Spanish, Haitian Creole, Chinese, Korean, Russian, Arabic, and any other language the board deems necessary.

~~[3-]~~ 4. The employee and participating individual 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 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) the process by which an individual can participate in the program as a participating individual;

(f) that ~~[they]~~ employees are not required to participate or contribute more than three percent;

~~[(f)]~~ (g) the process for withdrawal of retirement savings;

~~[(g)]~~ (h) the process for selecting beneficiaries of their retirement savings;

~~[(h)]~~ (i) how to obtain additional information about the program;

~~[(i)]~~ (j) that employees and participating individuals 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)]~~ (k) information on how to access any available financial literacy programs;

~~[(k)]~~ (l) that the program fund is not guaranteed by the state; and

~~[(l)]~~ (m) that they can opt out after they have been enrolled.

~~[4-]~~ 5. The employee informational materials shall also include a form for an employee to note his or her decision to opt out of participation in the program or elect to participate with a level of employee contributions other than three percent.

~~[5-]~~ 6. 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.

§ 6. Subdivision 2 of section 1310 of the general business law, as amended by chapter 452 of the laws of 2021, is amended to read as follows:

2. ~~[Enrollees]~~ Employees shall have the ability to select a contribution level into the program. This level may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for the ~~[enrollee's]~~ employee's taxable year under section 219(b)(1)(A) of the Internal Revenue Code. ~~[Enrollees]~~ Employees may change their contribution level at any time, subject to rules promulgated by the board. If an ~~[enrollee]~~ employee fails to select a contribution level using the form described in this article, then he or she shall contribute three

1 percent of his or her wages to the program, provided that such contrib-
2 utions shall not cause the [~~enrollee's~~] employee's total contributions
3 to IRAs for the year to exceed the deductible amount for the
4 [~~enrollee's~~] employee's taxable year under section 219(b)(1)(A) of the
5 Internal Revenue Code. The deduction of contributions from an employee's
6 wages shall not begin until the thirtieth day after such employee has
7 been enrolled in the program.

8 § 7. The general business law is amended by adding a new section
9 1310-a to read as follows:

10 § 1310-a. Program implementation and enrollment. Except as otherwise
11 provided in this article, the program shall be implemented, and enroll-
12 ment of participating individuals shall begin no later than December
13 thirty-first, two thousand twenty-three. The provisions of this section
14 shall be in force after the board opens the program for enrollment.

15 1. Participating individuals shall have the ability to make contrib-
16 utions into the program by personal contributions from a bank account or
17 by other means as determined by the board. The participating individual
18 shall be able to select the frequency and the contribution level which
19 may be expressed as a set dollar amount up to the deductible amount for
20 the participating individual's taxable year under section 219(b)(1)(A)
21 of the Internal Revenue Code subject to rules promulgated by the board.
22 Participating individuals may change their contribution level at any
23 time, subject to rules promulgated by the board.

24 2. Participating individuals may select an investment option offered
25 under the program. Participating individuals may change their investment
26 option at any time, subject to rules promulgated by the board. In the
27 event that a participating individual fails to select an investment
28 option, that participating individual shall be placed in the investment
29 option selected or authorized by the board as the default under this
30 article.

31 3. A participating individual may terminate his or her enrollment in
32 the program at any time in a manner prescribed by the board.

33 4. The board shall establish and maintain or authorize the establish-
34 ment and maintenance of a secure website wherein participating individ-
35 uals may log in and acquire information regarding contributions and
36 investment income allocated to, withdrawals from, and balances in their
37 program accounts for the reporting period. Such website must also
38 include information for the participating individual regarding other
39 options available to the individual and how they can transfer their
40 accounts to other programs should they wish to do so. Such website may
41 include any other information regarding the program as the board may
42 determine.

43 § 8. This act shall take effect immediately.