STATE OF NEW YORK

8654--A

Cal. No. 1029

IN SENATE

March 25, 2022

Introduced by Sens. SAVINO, GOUNARDES, HARCKHAM, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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:

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

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

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

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

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

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

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

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 qual-

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

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ified 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.

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

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

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

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

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

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

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

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

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

§ 1301. Program established. There is hereby established a retirement savings program in the form of an automatic enrollment payroll deduction IRA **for private-sector employees and a retirement savings program in the form of a personal IRA as established by the board for participating individuals**, 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 **and participating individuals** 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.

§ 3. Section 1303 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:

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

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

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

3. by using any contributions paid by **participating individuals,** employees**,** and employers remitting employees' own contributions into the

fund exclusively for the purpose of paying benefits to the enrollees of the program, for the cost of administration of the program, and for investments made for the benefit of the program.

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

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

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

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

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

(c) maximizes simplicity, including ease of administration for participating employers and enrollees;

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

(e) ensures the portability of benefits; and

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

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

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

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

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

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

7. Evaluate and establish or authorize the process for:

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

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

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

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.

10. **Evaluate and establish or authorize the process for the participation and enrollment of any participating individual.**

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

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

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

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

[~~14.~~] **15.** Facilitate education and outreach to employers and employees[~~.~~] **and facilitate the development of educational materials for participating individuals.**

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

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

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

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

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

[~~20.~~] **21.** 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.

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

§ 1309. Employer and employee **and participating individual** informational materials and disclosure forms. 1. Prior to the opening of the program for enrollment **for employees**, the board shall design and disseminate, or cause to be designed and disseminated, to all employers employer informational materials and employee informational materials, which shall include background information on the program, and necessary disclosures as required by law for employees.

2. **Prior to the opening of the program for enrollment for participating individuals, the board shall design and make publicly available**

informational materials which shall include background information on 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 percent of his or her wages to the program, provided that such contributions shall not cause the [~~enrollee's~~] employee's total contributions to IRAs for the year to exceed the deductible amount for the [~~enrollee's~~] employee's taxable year under section 219(b)(1)(A) of the Internal Revenue Code. The deduction of contributions from an employee's wages shall not begin until the thirtieth day after such employee has been enrolled in the program.

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

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

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

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

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

4. The board shall establish and maintain or authorize the establishment and maintenance of a secure website wherein participating individuals may log in and acquire information regarding contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. Such website must also include information for the participating individual regarding other options available to the individual and how they can transfer their accounts to other programs should they wish to do so. Such website may include any other information regarding the program as the board may determine.

§ 8. This act shall take effect immediately.