

# STATE OF NEW YORK

5395--A

2021-2022 Regular Sessions

## IN SENATE

March 3, 2021

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

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

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

4 § 1301. Program established. There is hereby established a retirement  
5 savings program in the form of [a] an automatic enrollment payroll  
6 deduction IRA, known as the New York state secure choice savings  
7 program. The general administration and responsibility for the proper  
8 operation of the program shall be administered by the board for the  
9 purpose of promoting greater retirement savings for private-sector  
10 employees in a convenient, low-cost, and portable manner. The board may  
11 delegate such authority and responsibility for the development and  
12 implementation of the program to the department of taxation and finance  
13 as the board deems proper.

14 § 2. Subdivisions 7 and 9 of section 1304 of the general business law,  
15 as added by section 2 of part X of chapter 55 of the laws of 2018, are  
16 amended to read as follows:

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

18 (a) an enrollee to contribute a portion of his or her wages to the  
19 program via payroll deduction; and

20 (b) the [~~voluntary~~] enrollment of participating employers in the  
21 program.

22 9. Evaluate and establish or authorize the process for enrollment  
23 including the process by which an employee may opt not to participate in

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

LBD03146-03-1

1 the program, select a contribution level, select an investment option,  
2 and terminate participation in the program.

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

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

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

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

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

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

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

17 (f) the process for withdrawal of retirement savings;

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

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

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

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

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

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

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

33 5. Participating employers shall supply the employee informational  
34 materials to existing employees at least one month prior to the partic-  
35 ipating employers' facilitation of access to the program. Participating  
36 employers shall supply the employee informational materials to new  
37 employees at the time of hiring and new employees may opt out of partic-  
38 ipation in the program.

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

42 1. Participating employers shall not have any liability for an employ-  
43 ee's decision regarding whether to participate in, or opt out of, the  
44 program or for the investment decisions of the board or of any enrollee.

45 § 5. Subdivisions 1, 2, 4 and 5 of section 1310 of the general busi-  
46 ness law, as added by section 2 of part X of chapter 55 of the laws of  
47 2018, are amended and a new subdivision 9 is added to read as follows:

48 1. [~~No employer shall be required to participate in or otherwise~~  
49 ~~implement the program.~~] (a) Each participating employer shall have a  
50 payroll deposit retirement savings arrangement to allow each employee to  
51 participate in the program at most nine months after the board opens the  
52 program for enrollment.

53 (b) Participating employers shall automatically enroll in the program  
54 each of their employees who has not opted out of participation in the  
55 program using the form described in this article and shall provide

1 payroll deduction retirement savings arrangements for such employees and  
2 deposit, on behalf of such employees, these funds into the program.

3 2. Enrollees shall have the ability to select a contribution level  
4 into the program. This level may be expressed as a percentage of wages  
5 or as a dollar amount up to the deductible amount for the enrollee's  
6 taxable year under section 219(b)(1)(A) of the Internal Revenue Code.  
7 Enrollees may change their contribution level at any time, subject to  
8 rules promulgated by the board. If an enrollee fails to select a  
9 contribution level using the form described in this article, then he or  
10 she shall contribute three percent of his or her wages to the program,  
11 provided that such contributions shall not cause the enrollee's total  
12 contributions to IRAs for the year to exceed the deductible amount for  
13 the enrollee's taxable year under section 219(b)(1)(A) of the Internal  
14 Revenue Code. The deduction of contributions from an employee's wages  
15 shall not begin until the thirtieth day after such employee has been  
16 enrolled in the program.

17 4. Following initial implementation of the program pursuant to this  
18 section, at least once every year, the program shall designate an open  
19 enrollment period during which employees who previously opted out of the  
20 program may enroll in the program.

21 5. An employee who [~~chooses not to participate in~~] opts out of the  
22 program and who subsequently wants to participate may only enroll during  
23 the program's designated open enrollment period or if permitted by the  
24 program at an earlier time.

25 9. A person or entity engaged in a business, industry, profession,  
26 trade, or other enterprise in New York state, whether for profit or not  
27 for profit, that offers a qualified retirement plan, including, but not  
28 limited to, a plan qualified under sections 401(a), 401(k), 403(a),  
29 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code of 1986  
30 shall not terminate such plan for the purposes of participating in the  
31 program.

32 § 6. Subdivisions 4 and 8 of section 1300 of the general business law,  
33 as added by section 2 of part X of chapter 55 of the laws of 2018, are  
34 amended to read as follows:

35 4. "Employer" shall mean a person or entity engaged in a business,  
36 industry, profession, trade, or other enterprise in New York state,  
37 whether for profit or not for profit, that (i) has at all times during  
38 the previous calendar year employed at least ten employees in the state,  
39 (ii) has been in business at least two years, and (iii) has not offered  
40 a qualified retirement plan, including, but not limited to, a plan qual-  
41 ified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or  
42 457(b) of the Internal Revenue Code of 1986 in the preceding two years.

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

47 § 7. This act shall take effect immediately.