STATE OF NEW YORK

8508

IN ASSEMBLY

January 4, 2024

Introduced by M. of A. STIRPE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the general business law, in relation to enrollees in the New York state secure choice savings program; and to repeal section 1310-a of such law relating thereto

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

Section 1. Subdivisions 5, 9, 10, 11 and 12 of section 1300 of the general business law, as amended by a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, are amended to read as follows:

5. "Enrollee" shall mean any employee or [~~participating~~] individual who is enrolled 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 [~~employees~~] **enrollees** to remit payroll deduction contributions to the program.

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

[~~12.~~] **11.** "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 a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, is 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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§ 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. Subdivision 3 of section 1303 of the general business law, as amended by a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, is amended to read as follows:

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. Subdivisions 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of section 1304 of the general business law, as amended by a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, are amended and a new subdivision 7-a is added to read as follows:

7-a. Evaluate and establish or authorize a process by which an individual or an employee of a nonparticipating employer may enroll in, make contributions to and otherwise participate 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.

[~~12.~~] **11.** 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.

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

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

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

[~~16.~~] 15. 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.

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

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

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

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

[~~21.~~] 20. 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 amended by a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, 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.

[~~4.~~] 3. 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 [~~employees~~] **they** are not required to participate or contribute more than three percent;

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

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

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

[~~(j)~~] **(i)** 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;

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

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

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

[~~5.~~] **4.** 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.

[~~6.~~] **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.

§ 6. Subdivision 2 of section 1310 of the general business law, as amended by a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, is amended to read as follows:

2. [~~Employees~~] **Enrollees** 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 [~~employee's~~] **enrollee's** taxable year under section 219(b)(1)(A) of the Internal Revenue Code. [~~Employees~~] **Enrollees** may change their contribution level at any time, subject to rules promulgated by the board. If an [~~employee~~] **enrollee** 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 [~~employee's~~] **enrollee's** total contributions to IRAs for the year to exceed the deductible amount for the [~~employee's~~] **enrollee'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. Section 1310-a of the general business law, as added by a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, is REPEALED.

§ 8. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the general business law relating to the secure choice savings program and participating individuals, as proposed in legislative bills numbers S. 2399 and A. 4529, takes effect.