

# STATE OF NEW YORK

8087

## IN SENATE

January 5, 2024

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

6 5. "Enrollee" shall mean any employee or [~~participating~~] individual  
7 who is enrolled in the program.

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

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

17 [~~11.~~] 10. "Program" shall mean the New York state secure choice  
18 savings program.

19 [~~12.~~] 11. "Wages" means any compensation within the meaning of section  
20 219(f)(1) of the Internal Revenue Code that is received by an enrollee  
21 from a participating employer [~~or by a participating individual~~] during  
22 the calendar year.

23 § 2. Section 1301 of the general business law, as amended by a chapter  
24 of the laws of 2023 amending the general business law relating to the  
25 secure choice savings program and participating individuals, as proposed  
26 in legislative bills numbers S. 2399 and A. 4529, is amended to read as  
27 follows:

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

LBD01813-02-4

§ 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.

1     ~~[15.]~~ 14. Facilitate education and outreach to employers and employees  
2     ~~[and facilitate the development of educational materials for participat-~~  
3     ~~ing individuals].~~

4     ~~[16.]~~ 15. Facilitate compliance by the program with all applicable  
5     requirements for the program under the Internal Revenue Code, including  
6     tax qualification requirements or any other applicable legal, financial  
7     reporting and accounting requirements.

8     ~~[17.]~~ 16. Carry out the duties and obligations of the program in an  
9     effective, efficient, and low-cost manner.

10    ~~[18.]~~ 17. Exercise any and all other powers reasonably necessary for  
11    the effectuation of the purposes, objectives, and provisions of this  
12    article.

13    ~~[19.]~~ 18. Determine or authorize withdrawal provisions, such as  
14    economic hardships, portability and leakage.

15    ~~[20.]~~ 19. Determine ~~[enrollee]~~ employee rights and enforcement of  
16    penalties.

17    ~~[21.]~~ 20. Delegate such authority and responsibility for the develop-  
18    ment and implementation of the program to the department of taxation and  
19    finance as the board deems proper.

20    § 5. Section 1309 of the general business law, as amended by a chapter  
21    of the laws of 2023 amending the general business law relating to the  
22    secure choice savings program and participating individuals, as proposed  
23    in legislative bills numbers S. 2399 and A. 4529, is amended to read as  
24    follows:

25    § 1309. Employer and employee ~~[and participating individual]~~ informa-  
26    tional materials and disclosure forms. 1. Prior to the opening of the  
27    program for enrollment ~~[for employees]~~, the board shall design and  
28    disseminate, or cause to be designed and disseminated, to all employers  
29    employer informational materials and employee informational materials,  
30    which shall include background information on the program, and necessary  
31    disclosures as required by law for employees.

32    2. ~~[Prior to the opening of the program for enrollment for participat-~~  
33    ~~ing individuals, the board shall design and make publicly available~~  
34    ~~informational materials which shall include background information on~~  
35    ~~the program and how to participate as a participating individual,~~  
36    ~~including but not limited to, information on the benefits and risks~~  
37    ~~associated with making contributions to the program, the process for~~  
38    ~~making contributions, the contribution levels they may contribute, the~~  
39    ~~process for withdrawal of retirement savings, and the process for~~  
40    ~~selecting beneficiaries.~~

41    ~~3.]~~ The employee ~~[and participating individual]~~ informational materi-  
42    als shall be made available in English, Spanish, Haitian Creole,  
43    Chinese, Korean, Russian, Arabic, and any other language the board deems  
44    necessary.

45    ~~[4.]~~ 3. The employee ~~[and participating individual]~~ informational  
46    materials shall include a disclosure form. The disclosure form shall  
47    explain, but not be limited to, all of the following:

48    (a) the benefits and risks associated with making contributions to the  
49    program;

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

51    (c) how to opt out of the program;

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

54    (e) ~~[the process by which an individual can participate in the program~~  
55    ~~as a participating individual,~~

1 ~~(f)~~ that ~~[employees]~~ they are not required to participate or contrib-  
2 ute more than three percent;

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

4 ~~(h)~~ (g) the process for selecting beneficiaries of their retirement  
5 savings;

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

7 ~~(j)~~ (i) that employees ~~[and participating individuals]~~ seeking  
8 financial advice should contact financial advisors, that participating  
9 employers are not in a position to provide financial advice, and that  
10 participating employers are not liable for decisions employees make  
11 pursuant to this article;

12 ~~(k)~~ (j) information on how to access any available financial litera-  
13 cy programs;

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

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

16 ~~5.~~ 4. The employee informational materials shall also include a form  
17 for an employee to note his or her decision to opt out of participation  
18 in the program or elect to participate with a level of employee contrib-  
19 utions other than three percent.

20 ~~6.~~ 5. Participating employers shall supply the employee informa-  
21 tional materials to existing employees at least one month prior to the  
22 participating employers' facilitation of access to the program. Partic-  
23 ipating employers shall supply the employee informational materials to  
24 new employees at the time of hiring and new employees may opt out of  
25 participation in the program.

26 § 6. Subdivision 2 of section 1310 of the general business law, as  
27 amended by a chapter of the laws of 2023 amending the general business  
28 law relating to the secure choice savings program and participating  
29 individuals, as proposed in legislative bills numbers S. 2399 and A.  
30 4529, is amended to read as follows:

31 2. ~~[Employees]~~ Enrollees shall have the ability to select a contrib-  
32 ution level into the program. This level may be expressed as a percent-  
33 age of wages or as a dollar amount up to the deductible amount for the  
34 ~~[employee's]~~ enrollee's taxable year under section 219(b)(1)(A) of the  
35 Internal Revenue Code. ~~[Employees]~~ Enrollees may change their contrib-  
36 ution level at any time, subject to rules promulgated by the board. If  
37 an ~~[employee]~~ enrollee fails to select a contribution level using the  
38 form described in this article, then he or she shall contribute three  
39 percent of his or her wages to the program, provided that such contrib-  
40 utions shall not cause the ~~[employee's]~~ enrollee's total contributions  
41 to IRAs for the year to exceed the deductible amount for the ~~[employ-~~  
42 ~~ee's]~~ enrollee's taxable year under section 219(b)(1)(A) of the Internal  
43 Revenue Code. The deduction of contributions from an employee's wages  
44 shall not begin until the thirtieth day after such employee has been  
45 enrolled in the program.

46 § 7. Section 1310-a of the general business law, as added by a chapter  
47 of the laws of 2023 amending the general business law relating to the  
48 secure choice savings program and participating individuals, as proposed  
49 in legislative bills numbers S. 2399 and A. 4529, is REPEALED.

50 § 8. This act shall take effect on the same date and in the same  
51 manner as a chapter of the laws of 2023 amending the general business  
52 law relating to the secure choice savings program and participating  
53 individuals, as proposed in legislative bills numbers S. 2399 and A.  
54 4529, takes effect.