STATE OF NEW YORK

3213--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. RODRIGUEZ, MONTESANO, FAHY, PEOPLES-STOKES, WOERNER, WEPRIN, BARRON, GOTTFRIED, PALMESANO, SANTABARBARA, RAMOS, PICHARDO, JOYNER, EPSTEIN, AUBRY, DeSTEFANO, CRUZ, LAVINE, GLICK, SIMON, CARROLL, FERNANDEZ, JACOBSON, GALEF, McDONALD, DICKENS -- 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

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

Section 1. Section 1301 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:

§ 1301. Program established. There is hereby established a retirement savings program in the form of [~~a~~] **an automatic enrollment** payroll deduction IRA, 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 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.

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

7. Evaluate and establish or authorize the process for:

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

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

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

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.

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

3. The employee 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 [~~cease participation in~~] **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) that they are not required to participate or contribute more than three percent;

(f) the process for withdrawal of retirement savings;

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

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

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

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

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

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

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**.

§ 4. Subdivision 1 of section 1313 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:

1. Participating employers shall not have any liability for an employee's decision regarding whether to participate in**, or opt out of,** the program or for the investment decisions of the board or of any enrollee.

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

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

(b) Participating employers shall automatically enroll in the program each of their employees who has not opted out of participation in the program using the form described in this article and shall provide payroll deduction retirement savings arrangements for such employees and deposit, on behalf of such employees, these funds into the program.

2. 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 enrollee's taxable year under section 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change their contribution level at any time, subject to rules promulgated by the board. If an 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 enrollee's total contributions to IRAs for the year to exceed the deductible amount for the 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.**

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

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

9. 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 offers a qualified retirement plan, including, but not limited to, a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code of 1986 shall not terminate such plan for the purposes of participating in the program.

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

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 qualified 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.

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

§ 7. This act shall take effect immediately.