

# STATE OF NEW YORK

4982

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

Introduced by M. of A. RODRIGUEZ, LUPARDO, COOK, MONTESANO, SEPULVEDA, RICHARDSON, MAYER, SOLAGES, DILAN, PRETLOW, PICHARDO, RIVERA, BLAKE, O'DONNELL, NOLAN, BENEDETTO, ROZIC, ARROYO, TITONE, DAVILA, JOYNER, FARRELL, HOOPER, DenDEKKER, WALKER, GOTTFRIED, AUBRY, SANTABARBARA, GUNTHER, PERRY, HUNTER, BICHOTTE, CRESPO, HARRIS, JEAN-PIERRE, BRAUNSTEIN, LAVINE, HEVESI, DINOWITZ, JENNE, BRINDISI, BARRON, MOSLEY, STIRPE, FAHY, CASTORINA, RAIA, ROSENTHAL, SKOUFIS, LIFTON, WEPRIN, RAMOS, ORTIZ, QUART, GALEF, SEAWRIGHT, SIMOTAS, RYAN, BRONSON, PEOPLES-STOKES, TITUS, KIM, KAVANAGH, WILLIAMS, COLTON, MOYA, HYNDMAN, WOERNER -- Multi-Sponsored by -- M. of A. BUCHWALD, CURRAN, ENGLEBRIGHT, GLICK, KEARNS, LENTOL, LOPEZ, LUPINACCI, McDONOUGH, McLAUGHLIN, RA, SIMANOWITZ, SKARTADOS, STECK, THIELE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law and the state finance law, in relation to enacting the New York state secure choice savings program act

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York state secure choice savings program act".

3 § 2. The retirement and social security law is amended by adding a new  
4 article 14-C to read as follows:

### ARTICLE 14-C

#### NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM

##### Section 570. Definitions.

8 571. Program established.

9 572. Composition of the board.

10 573. Fiduciary duty.

11 574. Duties of the board.

12 575. Risk management.

13 576. Investment firms.

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

LBD05116-01-7

1       577. Investment options.

2       578. Benefits.

3       579. Employer and employee information packets and disclosure  
4       forms.

5       580. Program implementation and enrollment.

6       581. Payments.

7       582. Duty and liability of the state.

8       583. Duty and liability of participating employers.

9       584. Audit and reports.

10       585. Penalties.

11       586. Delayed implementation.

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

15       1. "Board" shall mean the New York secure choice savings board estab-  
16 lished under this article.

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

19       2-a. "Comptroller" shall mean the comptroller of the state.

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

23       4. "Employer" shall mean a person or entity engaged in a business,  
24 industry, profession, trade, or other enterprise in New York state,  
25 whether for profit or not for profit, that (i) has at all times during  
26 the previous calendar year employed at least twenty-five employees in  
27 the state, (ii) has been in business at least two years, and (iii) has  
28 not offered a qualified retirement plan, including, but not limited to,  
29 a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k),  
30 408(p) or 457(b) of the Internal Revenue Code of 1986 in the preceding  
31 two years.

32       5. "Enrollee" shall mean any employee who is enrolled in the program.

33       6. "Fund" shall mean the New York state secure choice savings program  
34 fund.

35       7. "Internal Revenue Code" shall mean the Internal Revenue Code of  
36 1986, or any successor law, in effect for the calendar year.

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

38       9. "Participating employer" shall mean an employer or small employer  
39 that provides a payroll deposit retirement savings arrangement as  
40 provided for by this article for its employees who are enrollees in the  
41 program.

42       10. "Payroll deposit retirement savings arrangement" shall mean an  
43 arrangement by which a participating employer allows enrollees to remit  
44 payroll deduction contributions to the program.

45       11. "Program" shall mean the New York state secure choice savings  
46 program.

47       12. "Small employer" shall mean a person or entity engaged in a busi-  
48 ness, industry, profession, trade, or other enterprise in New York  
49 state, whether for profit or not for profit, that (i) employed less than  
50 twenty-five employees at any one time in the state throughout the previ-  
51 ous calendar year, or (ii) has been in business less than two years, or  
52 both items (i) and (ii), but that notifies the comptroller that it is  
53 interested in being a participating employer.

54       13. "Wages" means any compensation within the meaning of section  
55 219(f)(1) of the Internal Revenue Code that is received by an enrollee  
56 from a participating employer during the calendar year.

1     § 571. Program established. A retirement savings program in the form  
2 of an automatic enrollment payroll deduction IRA, known as the New York  
3 state secure choice savings program, is hereby established and shall be  
4 administered by the board for the purpose of promoting greater retire-  
5 ment savings for private-sector employees in a convenient, low-cost, and  
6 portable manner.

7     § 572. Composition of the board. There is hereby created the New York  
8 state secure choice savings board.

9     1. The board shall consist of the following eight members:

10     (a) the state comptroller, or his or her designee, who shall serve as  
11 chair;

12     (b) the superintendent, or his or her designee;

13     (c) two public representatives with expertise in retirement savings  
14 plan administration or investment, or both, one of whom shall be  
15 appointed by the speaker of the assembly and one of whom shall be  
16 appointed by the temporary president of the senate;

17     (d) a representative of participating employers, appointed by the  
18 governor;

19     (e) a representative of enrollees, appointed by the governor;

20     (f) the chair of the assembly governmental employees committee; and

21     (g) the chair of the senate civil service and pension committee.

22     2. Members of the board shall serve without compensation but may be  
23 reimbursed for necessary travel expenses incurred in connection with  
24 their board duties from funds appropriated for the purpose.

25     3. The initial appointments shall be as follows: one public represen-  
26 tative for four years; the representative of participating employers for  
27 three years; and the representative of enrollees for three years. Ther-  
28 after, all the governor's appointees shall be for terms of four years.

29     4. A vacancy in the term of an appointed board member shall be filled  
30 for the balance of the unexpired term in the same manner as the original  
31 appointment.

32     5. Each appointment by the governor shall be subject to approval by  
33 the comptroller, who, upon approval, shall certify his or her approval  
34 to the secretary of state.

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

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

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

47     3. by using any contributions paid by employees and employers remit-  
48 ting employees' own contributions into the trust exclusively for the  
49 purpose of paying benefits to the enrollees of the program, for the cost  
50 of administration of the program, and for investments made for the bene-  
51 fit of the program.

52     § 574. Duties of the board. In addition to the other duties and  
53 responsibilities stated in this article, the board shall:

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

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

1 (b) maximizes participation, savings, and sound investment practices;  
2 (c) maximizes simplicity, including ease of administration for partic-  
3 ipating employers and enrollees;

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

6 (e) ensures the portability of benefits; and

7 (f) provides for the deaccumulation of enrollee assets in a manner  
8 that maximizes financial security in retirement.

9 2. Appoint a trustee to the IRA fund in compliance with section 408 of  
10 the Internal Revenue Code.

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

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

19 5. Make and enter into contracts necessary for the administration of  
20 the program and fund, including, but not limited to, retaining and  
21 contracting with investment managers, private financial institutions,  
22 other financial and service providers, consultants, actuaries, counsel,  
23 auditors, third-party administrators, and other professionals as neces-  
24 sary.

25 6. Conduct a review of the performance of any investment vendors every  
26 four years, including, but not limited to, a review of returns, fees,  
27 and customer service. A copy of reviews shall be posted to the board's  
28 Internet website.

29 7. Determine the number and duties of staff members needed to adminis-  
30 ter the program and assemble such a staff, including, as needed, employ-  
31 ing staff, and appointing a program administrator.

32 8. Cause moneys in the fund to be held and invested as pooled invest-  
33 ments described in this article, with a view to achieving cost savings  
34 through efficiencies and economies of scale.

35 9. Evaluate and establish the process by which an enrollee is able to  
36 contribute a portion of his or her wages to the program for automatic  
37 deposit of those contributions and the process by which the participat-  
38 ing employer provides a payroll deposit retirement savings arrangement  
39 to forward those contributions and related information to the program,  
40 including, but not limited to, contracting with financial service compa-  
41 nies and third-party administrators with the capability to receive and  
42 process employee information and contributions for payroll deposit  
43 retirement savings arrangements or similar arrangements.

44 10. Design and establish the process for enrollment including the  
45 process by which an employee can opt not to participate in the program,  
46 select a contribution level, select an investment option, and terminate  
47 participation in the program.

48 11. Evaluate and establish the process by which an employee may volun-  
49 tarily enroll in and make contributions to the program.

50 12. Accept any grants, appropriations, or other moneys from the state,  
51 any unit of federal, state, or local government, or any other person,  
52 firm, partnership, or corporation solely for deposit into the fund,  
53 whether for investment or administrative purposes.

54 13. Evaluate the need for, and procure as needed, insurance against  
55 any and all loss in connection with the property, assets, or activities  
56 of the program, and indemnify as needed each member of the board from

1 personal loss or liability resulting from a member's action or inaction  
2 as a member of the board.

3 14. Make provisions for the payment of administrative costs and  
4 expenses for the creation, management, and operation of the program.  
5 Subject to appropriation, the state may pay administrative costs associ-  
6 ated with the creation and management of the program until sufficient  
7 assets are available in the fund for that purpose. Thereafter, all  
8 administrative costs of the fund, including repayment of any start-up  
9 funds provided by the state, shall be paid only out of moneys on deposit  
10 therein. However, private funds or federal funding received in order to  
11 implement the program until the fund is self-sustaining shall not be  
12 repaid unless those funds were offered contingent upon the promise of  
13 such repayment. The board shall keep annual administrative expenses as  
14 low as possible, but in no event shall they exceed 0.75% of the total  
15 trust balance.

16 15. Allocate administrative fees to individual retirement accounts in  
17 the program on a pro rata basis.

18 16. Set minimum and maximum contribution levels in accordance with  
19 limits established for IRAs by the Internal Revenue Code.

20 17. Facilitate education and outreach to employers and employees.

21 18. Facilitate compliance by the program with all applicable require-  
22 ments for the program under the Internal Revenue Code, including tax  
23 qualification requirements or any other applicable law and accounting  
24 requirements.

25 19. Carry out the duties and obligations of the program in an effec-  
26 tive, efficient, and low-cost manner.

27 20. Exercise any and all other powers reasonably necessary for the  
28 effectuation of the purposes, objectives, and provisions of this article  
29 pertaining to the program.

30 21. Deposit into the New York state secure choice administrative fund  
31 all grants, gifts, donations, fees, and earnings from investments from  
32 the New York state secure choice savings program fund that are used to  
33 recover administrative costs. All expenses of the board shall be paid  
34 from the New York state secure choice administrative fund.

35 22. Determine withdrawal provisions, such as economic hardships,  
36 portability and leakage.

37 23. Determine employee rights and enforcement of penalties.

38 § 575. Risk management. The board shall annually prepare and adopt a  
39 written statement of investment policy that includes a risk management  
40 and oversight program. This investment policy shall prohibit the board,  
41 program, and fund from borrowing for investment purposes. The risk  
42 management and oversight program shall be designed to ensure that an  
43 effective risk management system is in place to monitor the risk levels  
44 of the program and fund portfolio, to ensure that the risks taken are  
45 prudent and properly managed, to provide an integrated process for over-  
46 all risk management, and to assess investment returns as well as risk to  
47 determine if the risks taken are adequately compensated compared to  
48 applicable performance benchmarks and standards. The board shall consid-  
49 er the statement of investment policy and any changes in the investment  
50 policy at a public hearing.

51 § 576. Investment firms. 1. The board shall engage, after an open bid  
52 process, an investment manager or managers to invest the fund and any  
53 other assets of the program. Moneys in the fund may be invested or rein-  
54 vested by the comptroller or may be invested in whole or in part. In  
55 selecting the investment manager or managers, the board shall take into



1 consideration and give weight to the investment manager's fees and  
2 charges in order to reduce the program's administrative expenses.

3 2. The investment manager or managers shall comply with any and all  
4 applicable federal and state laws, rules, and regulations, as well as  
5 any and all rules, policies, and guidelines promulgated by the board  
6 with respect to the program and the investment of the fund, including,  
7 but not limited to, the investment policy.

8 3. The investment manager or managers shall provide such reports as  
9 the board deems necessary for the board to oversee each investment  
10 manager's performance and the performance of the fund.

11 § 577. Investment options. 1. The board shall establish as an invest-  
12 ment option a life-cycle fund with a target date based upon the age of  
13 the enrollee. This shall be the default investment option for enrollees  
14 who fail to elect an investment option unless and until the board desig-  
15 names by rule a new investment option as the default.

16 2. The board may also establish any or all of the following additional  
17 investment options:

18 (a) a conservative principal protection fund;

19 (b) a growth fund;

20 (c) a secure return fund whose primary objective is the preservation  
21 of the safety of principal and the provision of a stable and low-risk  
22 rate of return; if the board elects to establish a secure return fund,  
23 the board may procure any insurance, annuity, or other product to insure  
24 the value of enrollees' accounts and guarantee a rate of return; the  
25 cost of such funding mechanism shall be paid out of the fund; under no  
26 circumstances shall the board, program, fund, the state, or any partic-  
27 ipating employer assume any liability for investment or actuarial risk;  
28 the board shall determine whether to establish such investment options  
29 based upon an analysis of their cost, risk profile, benefit level,  
30 feasibility, and ease of implementation; or

31 (d) an annuity fund.

32 3. If the board elects to establish a secure return fund, the board  
33 shall then determine whether such option shall replace the target date  
34 or life-cycle fund as the default investment option for enrollees who do  
35 not elect an investment option. In making such determination, the board  
36 shall consider the cost, risk profile, benefit level, and ease of  
37 enrollment in the secure return fund. The board may at any time there-  
38 after revisit this question and, based upon an analysis of these crite-  
39 ria, establish either the secure return fund or the life-cycle fund as  
40 the default for enrollees who do not elect an investment option.

41 § 578. Benefits. Interest, investment earnings, and investment losses  
42 shall be allocated to individual program accounts as established by the  
43 board pursuant to this article. An individual's retirement savings bene-  
44 fit under the program shall be an amount equal to the balance in the  
45 individual's program account on the date the retirement savings benefit  
46 becomes payable. The state shall have no liability for the payment of  
47 any benefit to any enrollee in the program.

48 § 579. Employer and employee information packets and disclosure forms.

49 1. Prior to the opening of the program for enrollment, the board shall  
50 design and disseminate to all employers an employer information packet  
51 and an employee information packet, which shall include background  
52 information on the program, appropriate disclosures for employees, and  
53 information regarding the vendor Internet website described.

54 2. The board shall provide for the contents of both the employee  
55 information packet and the employer information packet. The employee  
56 information packet shall be made available in English, Spanish, Haitian

1 Creole, Chinese, Korean, Russian, Arabic, and any other language the  
2 comptroller deems necessary.

3 3. The employee information packet shall include a disclosure form.  
4 The disclosure form shall explain, but not be limited to, all of the  
5 following:

6 (a) the benefits and risks associated with making contributions to the  
7 program;

8 (b) the mechanics of how to make contributions to the program;

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

10 (d) how to participate in the program with a level of employee  
11 contributions other than three percent;

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

14 (f) that they can opt out after they have enrolled;

15 (g) the process for withdrawal of retirement savings;

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

17 (i) that employees seeking financial advice should contact financial  
18 advisors, that participating employers are not in a position to provide  
19 financial advice, and that participating employers are not liable for  
20 decisions employees make pursuant to this article;

21 (j) information on how to access any financial literacy programs  
22 implemented by the comptroller;

23 (k) that the program is not an employer-sponsored retirement plan; and

24 (l) that the program fund is not guaranteed by the state.

25 4. The employee information packet shall also include a form for an  
26 employee to note his or her decision to opt out of participation in the  
27 program or elect to participate with a level of employee contributions  
28 other than three percent.

29 5. Participating employers shall supply the employee information pack-  
30 et to employees upon launch of the program. Participating employers  
31 shall supply the employee information packet to new employees at the  
32 time of hiring, and new employees may opt out of participation in the  
33 program or elect to participate with a level of employee contributions  
34 other than three percent at that time.

35 § 580. Program implementation and enrollment. Except as otherwise  
36 provided in this article, the program shall be implemented, and enroll-  
37 ment of employees shall begin, within twenty-four months after the  
38 effective date of this article. The provisions of this section shall be  
39 in force after the board opens the program for enrollment.

40 1. Each participating employer shall establish a payroll deposit  
41 retirement savings arrangement to allow each employee to participate in  
42 the program at most nine months after the board opens the program for  
43 enrollment.

44 2. Participating employers shall automatically enroll in the program  
45 each of their employees who has not opted out of participation in the  
46 program using the form described in this article and shall provide  
47 payroll deduction retirement savings arrangements for such employees and  
48 deposit, on behalf of such employees, these funds into the program.  
49 Small employers with less than twenty-five employees may, but are not  
50 required to, opt into the program, but only if their employees opt in to  
51 provide payroll deduction retirement savings arrangements for each  
52 employee who elects to participate in the program.

53 3. Enrollees shall have the ability to select a contribution level  
54 into the fund. This level may be expressed as a percentage of wages or  
55 as a dollar amount up to the deductible amount for the enrollee's taxa-  
56 ble year under section 219(b)(1)(A) of the Internal Revenue Code. Enrol-

1 lees may change their contribution level at any time, subject to rules  
2 promulgated by the board. If an enrollee fails to select a contribution  
3 level using the form described in this article, then he or she shall  
4 contribute three percent of his or her wages to the program, provided  
5 that such contributions shall not cause the enrollee's total contrib-  
6 utions to IRAs for the year to exceed the deductible amount for the  
7 enrollee's taxable year under section 219(b)(1)(A) of the Internal  
8 Revenue Code.

9 4. Enrollees may select an investment option from the permitted  
10 investment options listed in this article. Enrollees may change their  
11 investment option at any time, subject to rules promulgated by the  
12 board. In the event that an enrollee fails to select an investment  
13 option, that enrollee shall be placed in the investment option selected  
14 by the board as the default under this article. If the board has not  
15 selected a default investment option under this article, then an enrol-  
16 lee who fails to select an investment option shall be placed in the  
17 life-cycle fund investment option.

18 5. Following initial implementation of the program pursuant to this  
19 section, at least once every year, participating employers shall desig-  
20 nate an open enrollment period during which employees who previously  
21 opted out of the program may enroll in the program.

22 6. An employee who opts out of the program who subsequently wants to  
23 participate through the participating employer's payroll deposit retire-  
24 ment savings arrangement may only enroll during the participating  
25 employer's designated open enrollment period or if permitted by the  
26 participating employer at an earlier time.

27 7. Employers shall retain the option at all times to set up any type  
28 of employer-sponsored retirement plan instead of having a payroll depos-  
29 it retirement savings arrangement to allow employee participation in the  
30 program.

31 8. An enrollee may terminate his or her participation in the program  
32 at any time in a manner prescribed by the board.

33 9. (a) The state comptroller shall establish a website regarding the  
34 secure choice savings program which shall be accessible through the  
35 state comptroller's own website.

36 (b) The board shall, in conjunction with the office of the state comp-  
37 troller, establish and maintain a secure website wherein enrollees may  
38 log in and acquire information regarding contributions and investment  
39 income allocated to, withdrawals from, and balances in their program  
40 accounts for the reporting period. Such website must also include infor-  
41 mation for the enrollees regarding other options available to the  
42 employee and how they can transfer their accounts to other programs  
43 should they wish to do so. Such website may include any other informa-  
44 tion regarding the program as the board may determine.

45 § 581. Payments. Employee contributions deducted by the participating  
46 employer through payroll deduction shall be paid by the participating  
47 employer to the fund using one or more payroll deposit retirement  
48 savings arrangements established by the board under this article,  
49 either:

50 1. on or before the last day of the month following the month in which  
51 the compensation otherwise would have been payable to the employee in  
52 cash; or

53 2. before such later deadline prescribed by the board for making such  
54 payments, but not later than the due date for the deposit of tax  
55 required to be deducted and withheld relating to collection of income  
56 tax at source on wages or for the deposit of tax required to be paid



1 under the unemployment insurance system for the payroll period to which  
2 such payments relate.

3 § 582. Duty and liability of the state. 1. The state shall have no  
4 duty or liability to any party for the payment of any retirement savings  
5 benefits accrued by any enrollee under the program. Any financial  
6 liability for the payment of retirement savings benefits in excess of  
7 funds available under the program shall be borne solely by the entities  
8 with whom the board contracts to provide insurance to protect the value  
9 of the program.

10 2. No state board, commission, or agency, or any officer, employee, or  
11 member thereof is liable for any loss or deficiency resulting from  
12 particular investments selected under this article, except for any  
13 liability that arises out of a breach of fiduciary duty.

14 § 583. Duty and liability of participating employers. 1. Participat-  
15 ing employers shall not have any liability for an employee's decision to  
16 participate in, or opt out of, the program or for the investment deci-  
17 sions of the board or of any enrollee.

18 2. A participating employer shall not be a fiduciary, or considered to  
19 be a fiduciary, over the program. A participating employer shall not  
20 bear responsibility for the administration, investment, or investment  
21 performance of the program. A participating employer shall not be liable  
22 with regard to investment returns, program design, and benefits paid to  
23 program participants.

24 § 584. Audit and reports. 1. The board shall annually submit:

25 (a) an audited financial report, prepared in accordance with generally  
26 accepted accounting principles, on the operations of the program during  
27 each calendar year by July first of the following year to the governor,  
28 the comptroller, the superintendent of financial services and the senate  
29 and assembly; and

30 (b) a report prepared by the board, which shall include, but is not  
31 limited to, a summary of the benefits provided by the program, including  
32 the number of enrollees in the program, the percentage and amounts of  
33 investment options and rates of return, and such other information that  
34 is relevant to make a full, fair, and effective disclosure of the oper-  
35 ations of the program and the fund. The annual audit shall be made by an  
36 independent certified public accountant and shall include, but is not  
37 limited to, direct and indirect costs attributable to the use of outside  
38 consultants, independent contractors, and any other persons who are not  
39 state employees for the administration of the program.

40 2. In addition to any other statements or reports required by law, the  
41 board shall provide periodic reports at least annually to enrollees,  
42 reporting contributions and investment income allocated to, withdrawals  
43 from, and balances in their program accounts for the reporting period.  
44 Such reports may include any other information regarding the program as  
45 the board may determine.

46 § 585. Penalties. 1. An employer who fails without reasonable cause to  
47 enroll an employee in the program within the time prescribed under this  
48 article shall be subject to a penalty equal to:

49 (a) two hundred fifty dollars for each employee for each calendar year  
50 or portion of a calendar year during which the employee neither was  
51 enrolled in the program nor had elected out of participation in the  
52 program; or

53 (b) for each calendar year beginning after the date a penalty has been  
54 assessed with respect to an employee, five hundred dollars for any  
55 portion of that calendar year during which such employee continues to be  
56 unenrolled without electing out of participation in the program.

2. After determining that an employer is subject to penalty under this section for a calendar year, the comptroller shall issue a notice of proposed assessment to such employer, stating the number of employees for which the penalty is proposed under this section and the number of employees for which the penalty is proposed under this section for such calendar year, and the total amount of penalties proposed. Upon the expiration of ninety days after the date on which a notice of proposed assessment was issued, the penalties specified therein shall be deemed assessed, unless the employer had filed a protest with the comptroller under this section. If, within ninety days after the date on which it was issued, a protest of a notice of proposed assessment is filed under this section, the penalties specified therein shall be deemed assessed upon the date when the decision of the comptroller with respect to the protest becomes final.

3. A written protest against the proposed assessment shall be filed with the comptroller in such form as the comptroller may by rule prescribe, setting forth the grounds on which such protest is based. If such a protest is filed within ninety days after the date the notice of proposed assessment is issued, the comptroller shall reconsider the proposed assessment and shall grant the employer a hearing. As soon as practicable after such reconsideration and hearing, the comptroller shall issue a notice of decision to the employer, setting forth the comptroller's findings of fact and the basis of decision. The decision of the comptroller shall become final:

(a) if no action for review of the decision is commenced, on the date on which the time for commencement of such review has expired; or

(b) if a timely action for review of the decision is commenced, on the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

4. As soon as practicable after the penalties specified in a notice of proposed assessment are deemed assessed, the comptroller shall give notice to the employer liable for any unpaid portion of such assessment, stating the amount due and demanding payment. If an employer neglects or refuses to pay the entire liability shown on the notice and demand within ten days after the notice and demand is issued, the unpaid amount of the liability shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to the employer.

5. An employer who has overpaid a penalty assessed under this section may file a claim for refund with the comptroller. A claim shall be in writing in such form as the comptroller may by rule prescribe and shall state the specific grounds upon which it is founded. As soon as practicable after a claim for refund is filed, the comptroller shall examine it and either issue a refund or issue a notice of denial. If such a protest is filed, the comptroller shall reconsider the denial and grant the employer a hearing. As soon as practicable after such reconsideration and hearing, the comptroller shall issue a notice of decision to the employer. The notice shall set forth briefly the comptroller's findings of fact and the basis of decision in each case decided in whole or in part adversely to the employer. A denial of a claim for refund becomes final ninety days after the date of issuance of the notice of the denial except for such amounts denied as to which the employer has filed a protest with the comptroller. If a protest has been timely filed, the decision of the comptroller shall become final:

1 (a) if no action for review of the decision is commenced on the date  
2 on which the time for commencement of such review has expired; or

3 (b) if a timely action for review of the decision is commenced on the  
4 date all proceedings in court for the review of such assessment have  
5 terminated or the time for the taking thereof has expired without such  
6 proceedings being instituted.

7 6. No notice of proposed assessment may be issued with respect to a  
8 calendar year after June thirtieth of the fourth subsequent calendar  
9 year. No claim for refund may be filed more than one year after the date  
10 of payment of the amount to be refunded.

11 7. Whenever notice is required by this section, it may be given or  
12 issued by mailing it by first-class mail addressed to the person  
13 concerned at his or her last known address.

14 8. All books and records and other papers and documents relevant to  
15 the determination of any penalty due under this section shall, at all  
16 times during business hours of the day, be subject to inspection by the  
17 comptroller or its duly authorized agents and employees.

18 9. The comptroller may require employers to report information rele-  
19 vant to their compliance with this article on tax returns and failure to  
20 provide the requested information on a return shall cause such return to  
21 be treated as unprocessable.

22 10. For purposes of any provision of state law allowing the comp-  
23 troller or any other agency of this state to offset an amount owed to a  
24 taxpayer against a tax liability of that taxpayer or allowing the comp-  
25 troller to offset an overpayment of tax against any liability owed to  
26 the state, a penalty assessed under this section shall be deemed to be a  
27 tax liability of the employer and any refund due to an employer shall be  
28 deemed to be an overpayment of tax of the employer.

29 11. Except as provided in this subdivision, all information received  
30 by the comptroller from returns filed by an employer or from any inves-  
31 tigation conducted under the provisions of this article shall be confi-  
32 dential, except for official purposes within the office of the comp-  
33 troller or pursuant to official procedures for collection of penalties  
34 assessed under this article. Nothing contained in this subdivision  
35 shall prevent the director from publishing or making available to the  
36 public reasonable statistics concerning the operation of this article  
37 wherein the contents of returns are grouped into aggregates in such a  
38 way that the specific information of any employer shall not be  
39 disclosed. Nothing contained in this subdivision shall prevent the  
40 director from divulging information to an authorized representative of  
41 the employer or to any person pursuant to a request or authorization  
42 made by the employer or by an authorized representative of the employer.

43 12. Civil penalties and fees collected under this article shall be  
44 deposited with the comptroller for purposes dedicated to the adminis-  
45 tration of the program.

46 13. The comptroller may charge the board incurred expenses for its  
47 costs in performing its duties under this section to the extent that  
48 such costs have not been recovered from penalties imposed under this  
49 section.

50 14. This section shall become operative nine months after the board  
51 notifies the director that the program has been implemented. Upon  
52 receipt of such notification from the board, the comptroller shall imme-  
53 diately post on its internet website a notice stating that this section  
54 is operative and the date that it is first operative. This notice shall  
55 include a statement that rather than enrolling employees in the program  
56 under this article, employers may sponsor an alternative arrangement.

1     § 586. Delayed implementation. If the board does not obtain adequate  
2 funds to implement the program within the time frame set forth under  
3 this article and is subject to appropriation, the board may delay the  
4 implementation of the program.

5     § 3. The state finance law is amended by adding two new sections 99-aa  
6 and 99-bb to read as follows:

7     § 99-aa. New York state secure choice savings program fund. 1. There  
8 is hereby established within the joint custody of the commissioner of  
9 taxation and finance and the state comptroller in consultation with the  
10 New York state secure choice savings program board, a new fund to be  
11 known as the New York state secure choice savings program fund.

12     2. The fund shall include the individual retirement accounts of enrol-  
13 lees, which shall be accounted for as individual accounts.

14     3. Moneys in the fund shall consist of moneys received from enrollees  
15 and participating employers pursuant to automatic payroll deductions and  
16 contributions to savings made under the New York state secure choice  
17 savings program pursuant to article fourteen-C of the retirement and  
18 social security law.

19     4. The fund shall be operated in a manner determined by the New York  
20 state secure choice savings program board, provided that the fund is  
21 operated so that the accounts of enrollees established under the program  
22 meet the requirements for IRAs under the Internal Revenue Code.

23     5. The amounts deposited in the fund shall not constitute property of  
24 the state and the fund shall not be construed to be a department, insti-  
25 tution, or agency of the state. Amounts on deposit in the fund shall not  
26 be commingled with state funds and the state shall have no claim to or  
27 against, or interest in, such funds.

28     § 99-bb. New York state secure choice administrative fund. 1. There  
29 is hereby established within the joint custody of the commissioner of  
30 taxation and finance and the state comptroller in consultation with the  
31 New York state secure choice savings program board, a new fund to be  
32 known as the New York state secure choice administrative fund.

33     2. The New York state secure choice savings program board shall use  
34 moneys in the administrative fund to pay for administrative expenses it  
35 incurs in the performance of its duties under the New York state secure  
36 choice savings program pursuant to article fourteen-C of the retirement  
37 and social security law.

38     3. The New York state secure choice savings program board shall use  
39 moneys in the administrative fund to cover start-up administrative  
40 expenses it incurs in the performance of its duties under article four-  
41 teen-C of the retirement and social security law.

42     4. The administrative fund may receive any grants or other moneys  
43 designated for administrative purposes from the state, or any unit of  
44 federal or local government, or any other person, firm, partnership, or  
45 corporation. Any interest earnings that are attributable to moneys in  
46 the administrative fund must be deposited into the administrative fund.

47     § 4. This act shall take effect immediately.