

STATE OF NEW YORK

4344

2017-2018 Regular Sessions

IN SENATE

February 10, 2017

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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.

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14 577. Investment options.

15 578. Benefits.

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17 forms.

18 580. Program implementation and enrollment.

19 581. Payments.

20 582. Duty and liability of the state.

21 583. Duty and liability of participating employers.

22 584. Audit and reports.

23 585. Penalties.

24 586. Delayed implementation.

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

LBD05116-01-7

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

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

6 2. "Superintendent" shall mean the superintendent of the department of
7 financial services.

8 2-a. "Comptroller" shall mean the comptroller of the state.

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

12 4. "Employer" shall mean a person or entity engaged in a business,
13 industry, profession, trade, or other enterprise in New York state,
14 whether for profit or not for profit, that (i) has at all times during
15 the previous calendar year employed at least twenty-five employees in
16 the state, (ii) has been in business at least two years, and (iii) has
17 not offered a qualified retirement plan, including, but not limited to,
18 a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k),
19 408(p) or 457(b) of the Internal Revenue Code of 1986 in the preceding
20 two years.

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

22 6. "Fund" shall mean the New York state secure choice savings program
23 fund.

24 7. "Internal Revenue Code" shall mean the Internal Revenue Code of
25 1986, or any successor law, in effect for the calendar year.

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

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

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

34 11. "Program" shall mean the New York state secure choice savings
35 program.

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

43 13. "Wages" means any compensation within the meaning of section
44 219(f)(1) of the Internal Revenue Code that is received by an enrollee
45 from a participating employer during the calendar year.

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

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

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

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

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

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

6 (d) a representative of participating employers, appointed by the
7 governor;

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

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

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

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

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

18 4. A vacancy in the term of an appointed board member shall be filled
19 for the balance of the unexpired term in the same manner as the original
20 appointment.

21 5. Each appointment by the governor shall be subject to approval by
22 the comptroller, who, upon approval, shall certify his or her approval
23 to the secretary of state.

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

29 1. for the exclusive purposes of providing benefits to enrollees and
30 beneficiaries and defraying reasonable expenses of administering the
31 program;

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

36 3. by using any contributions paid by employees and employers remit-
37 ting employees' own contributions into the trust exclusively for the
38 purpose of paying benefits to the enrollees of the program, for the cost
39 of administration of the program, and for investments made for the bene-
40 fit of the program.

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

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

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

46 (b) maximizes participation, savings, and sound investment practices;

47 (c) maximizes simplicity, including ease of administration for partic-
48 ipating employers and enrollees;

49 (d) provides an efficient product to enrollees by pooling investment
50 funds;

51 (e) ensures the portability of benefits; and

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

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

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

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

9 5. Make and enter into contracts necessary for the administration of
10 the program and fund, including, but not limited to, retaining and
11 contracting with investment managers, private financial institutions,
12 other financial and service providers, consultants, actuaries, counsel,
13 auditors, third-party administrators, and other professionals as neces-
14 sary.

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

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

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

25 9. Evaluate and establish the process by which an enrollee is able to
26 contribute a portion of his or her wages to the program for automatic
27 deposit of those contributions and the process by which the participat-
28 ing employer provides a payroll deposit retirement savings arrangement
29 to forward those contributions and related information to the program,
30 including, but not limited to, contracting with financial service compa-
31 nies and third-party administrators with the capability to receive and
32 process employee information and contributions for payroll deposit
33 retirement savings arrangements or similar arrangements.

34 10. Design and establish the process for enrollment including the
35 process by which an employee can opt not to participate in the program,
36 select a contribution level, select an investment option, and terminate
37 participation in the program.

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

40 12. Accept any grants, appropriations, or other moneys from the state,
41 any unit of federal, state, or local government, or any other person,
42 firm, partnership, or corporation solely for deposit into the fund,
43 whether for investment or administrative purposes.

44 13. Evaluate the need for, and procure as needed, insurance against
45 any and all loss in connection with the property, assets, or activities
46 of the program, and indemnify as needed each member of the board from
47 personal loss or liability resulting from a member's action or inaction
48 as a member of the board.

49 14. Make provisions for the payment of administrative costs and
50 expenses for the creation, management, and operation of the program.
51 Subject to appropriation, the state may pay administrative costs associ-
52 ated with the creation and management of the program until sufficient
53 assets are available in the fund for that purpose. Thereafter, all
54 administrative costs of the fund, including repayment of any start-up
55 funds provided by the state, shall be paid only out of moneys on deposit
56 therein. However, private funds or federal funding received in order to

1 implement the program until the fund is self-sustaining shall not be
2 repaid unless those funds were offered contingent upon the promise of
3 such repayment. The board shall keep annual administrative expenses as
4 low as possible, but in no event shall they exceed 0.75% of the total
5 trust balance.

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

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

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

11 18. Facilitate compliance by the program with all applicable require-
12 ments for the program under the Internal Revenue Code, including tax
13 qualification requirements or any other applicable law and accounting
14 requirements.

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

17 20. Exercise any and all other powers reasonably necessary for the
18 effectuation of the purposes, objectives, and provisions of this article
19 pertaining to the program.

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

25 22. Determine withdrawal provisions, such as economic hardships,
26 portability and leakage.

27 23. Determine employee rights and enforcement of penalties.

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

41 § 576. Investment firms. 1. The board shall engage, after an open bid
42 process, an investment manager or managers to invest the fund and any
43 other assets of the program. Moneys in the fund may be invested or rein-
44 vested by the comptroller or may be invested in whole or in part. In
45 selecting the investment manager or managers, the board shall take into
46 consideration and give weight to the investment manager's fees and
47 charges in order to reduce the program's administrative expenses.

48 2. The investment manager or managers shall comply with any and all
49 applicable federal and state laws, rules, and regulations, as well as
50 any and all rules, policies, and guidelines promulgated by the board
51 with respect to the program and the investment of the fund, including,
52 but not limited to, the investment policy.

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

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

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

8 (a) a conservative principal protection fund;

9 (b) a growth fund;

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

21 (d) an annuity fund.

22 3. If the board elects to establish a secure return fund, the board
23 shall then determine whether such option shall replace the target date
24 or life-cycle fund as the default investment option for enrollees who do
25 not elect an investment option. In making such determination, the board
26 shall consider the cost, risk profile, benefit level, and ease of
27 enrollment in the secure return fund. The board may at any time there-
28 after revisit this question and, based upon an analysis of these crite-
29 ria, establish either the secure return fund or the life-cycle fund as
30 the default for enrollees who do not elect an investment option.

31 § 578. Benefits. Interest, investment earnings, and investment losses
32 shall be allocated to individual program accounts as established by the
33 board pursuant to this article. An individual's retirement savings bene-
34 fit under the program shall be an amount equal to the balance in the
35 individual's program account on the date the retirement savings benefit
36 becomes payable. The state shall have no liability for the payment of
37 any benefit to any enrollee in the program.

38 § 579. Employer and employee information packets and disclosure forms.
39 1. Prior to the opening of the program for enrollment, the board shall
40 design and disseminate to all employers an employer information packet
41 and an employee information packet, which shall include background
42 information on the program, appropriate disclosures for employees, and
43 information regarding the vendor Internet website described.

44 2. The board shall provide for the contents of both the employee
45 information packet and the employer information packet. The employee
46 information packet shall be made available in English, Spanish, Haitian
47 Creole, Chinese, Korean, Russian, Arabic, and any other language the
48 comptroller deems necessary.

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

52 (a) the benefits and risks associated with making contributions to the
53 program;

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

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

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

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

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

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

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

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

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

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

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

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

20 5. Participating employers shall supply the employee information pack-
21 et to employees upon launch of the program. Participating employers
22 shall supply the employee information packet to new employees at the
23 time of hiring, and new employees may opt out of participation in the
24 program or elect to participate with a level of employee contributions
25 other than three percent at that time.

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

31 1. Each participating employer shall establish a payroll deposit
32 retirement savings arrangement to allow each employee to participate in
33 the program at most nine months after the board opens the program for
34 enrollment.

35 2. Participating employers shall automatically enroll in the program
36 each of their employees who has not opted out of participation in the
37 program using the form described in this article and shall provide
38 payroll deduction retirement savings arrangements for such employees and
39 deposit, on behalf of such employees, these funds into the program.
40 Small employers with less than twenty-five employees may, but are not
41 required to, opt into the program, but only if their employees opt in to
42 provide payroll deduction retirement savings arrangements for each
43 employee who elects to participate in the program.

44 3. Enrollees shall have the ability to select a contribution level
45 into the fund. This level may be expressed as a percentage of wages or
46 as a dollar amount up to the deductible amount for the enrollee's tax-
47 able year under section 219(b)(1)(A) of the Internal Revenue Code. Enrol-
48 lees may change their contribution level at any time, subject to rules
49 promulgated by the board. If an enrollee fails to select a contribution
50 level using the form described in this article, then he or she shall
51 contribute three percent of his or her wages to the program, provided
52 that such contributions shall not cause the enrollee's total contrib-
53 utions to IRAs for the year to exceed the deductible amount for the
54 enrollee's taxable year under section 219(b)(1)(A) of the Internal
55 Revenue Code.

1 4. Enrollees may select an investment option from the permitted
2 investment options listed in this article. Enrollees may change their
3 investment option at any time, subject to rules promulgated by the
4 board. In the event that an enrollee fails to select an investment
5 option, that enrollee shall be placed in the investment option selected
6 by the board as the default under this article. If the board has not
7 selected a default investment option under this article, then an enrol-
8 lee who fails to select an investment option shall be placed in the
9 life-cycle fund investment option.

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

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

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

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

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

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

37 § 581. Payments. Employee contributions deducted by the participating
38 employer through payroll deduction shall be paid by the participating
39 employer to the fund using one or more payroll deposit retirement
40 savings arrangements established by the board under this article,
41 either:

42 1. on or before the last day of the month following the month in which
43 the compensation otherwise would have been payable to the employee in
44 cash; or

45 2. before such later deadline prescribed by the board for making such
46 payments, but not later than the due date for the deposit of tax
47 required to be deducted and withheld relating to collection of income
48 tax at source on wages or for the deposit of tax required to be paid
49 under the unemployment insurance system for the payroll period to which
50 such payments relate.

51 § 582. Duty and liability of the state. 1. The state shall have no
52 duty or liability to any party for the payment of any retirement savings
53 benefits accrued by any enrollee under the program. Any financial
54 liability for the payment of retirement savings benefits in excess of
55 funds available under the program shall be borne solely by the entities

1 with whom the board contracts to provide insurance to protect the value
2 of the program.

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

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

11 2. A participating employer shall not be a fiduciary, or considered to
12 be a fiduciary, over the program. A participating employer shall not
13 bear responsibility for the administration, investment, or investment
14 performance of the program. A participating employer shall not be liable
15 with regard to investment returns, program design, and benefits paid to
16 program participants.

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

18 (a) an audited financial report, prepared in accordance with generally
19 accepted accounting principles, on the operations of the program during
20 each calendar year by July first of the following year to the governor,
21 the comptroller, the superintendent of financial services and the senate
22 and assembly; and

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

33 2. In addition to any other statements or reports required by law, the
34 board shall provide periodic reports at least annually to enrollees,
35 reporting contributions and investment income allocated to, withdrawals
36 from, and balances in their program accounts for the reporting period.
37 Such reports may include any other information regarding the program as
38 the board may determine.

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

42 (a) two hundred fifty dollars for each employee for each calendar year
43 or portion of a calendar year during which the employee neither was
44 enrolled in the program nor had elected out of participation in the
45 program; or

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

50 2. After determining that an employer is subject to penalty under this
51 section for a calendar year, the comptroller shall issue a notice of
52 proposed assessment to such employer, stating the number of employees
53 for which the penalty is proposed under this section and the number of
54 employees for which the penalty is proposed under this section for such
55 calendar year, and the total amount of penalties proposed. Upon the
56 expiration of ninety days after the date on which a notice of proposed

1 assessment was issued, the penalties specified therein shall be deemed
2 assessed, unless the employer had filed a protest with the comptroller
3 under this section. If, within ninety days after the date on which it
4 was issued, a protest of a notice of proposed assessment is filed under
5 this section, the penalties specified therein shall be deemed assessed
6 upon the date when the decision of the comptroller with respect to the
7 protest becomes final.

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

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

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

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

33 5. An employer who has overpaid a penalty assessed under this section
34 may file a claim for refund with the comptroller. A claim shall be in
35 writing in such form as the comptroller may by rule prescribe and shall
36 state the specific grounds upon which it is founded. As soon as practi-
37 cable after a claim for refund is filed, the comptroller shall examine
38 it and either issue a refund or issue a notice of denial. If such a
39 protest is filed, the comptroller shall reconsider the denial and grant
40 the employer a hearing. As soon as practicable after such reconsider-
41 ation and hearing, the comptroller shall issue a notice of decision to
42 the employer. The notice shall set forth briefly the comptroller's find-
43 ings of fact and the basis of decision in each case decided in whole or
44 in part adversely to the employer. A denial of a claim for refund
45 becomes final ninety days after the date of issuance of the notice of
46 the denial except for such amounts denied as to which the employer has
47 filed a protest with the comptroller. If a protest has been timely
48 filed, the decision of the comptroller shall become final:

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

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

55 6. No notice of proposed assessment may be issued with respect to a
56 calendar year after June thirtieth of the fourth subsequent calendar

1 year. No claim for refund may be filed more than one year after the date
2 of payment of the amount to be refunded.

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

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

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

14 10. For purposes of any provision of state law allowing the comp-
15 troller or any other agency of this state to offset an amount owed to a
16 taxpayer against a tax liability of that taxpayer or allowing the comp-
17 troller to offset an overpayment of tax against any liability owed to
18 the state, a penalty assessed under this section shall be deemed to be a
19 tax liability of the employer and any refund due to an employer shall be
20 deemed to be an overpayment of tax of the employer.

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

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

38 13. The comptroller may charge the board incurred expenses for its
39 costs in performing its duties under this section to the extent that
40 such costs have not been recovered from penalties imposed under this
41 section.

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

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

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

55 § 99-aa. New York state secure choice savings program fund. 1. There
56 is hereby established within the joint custody of the commissioner of

1 taxation and finance and the state comptroller in consultation with the
2 New York state secure choice savings program board, a new fund to be
3 known as the New York state secure choice savings program fund.

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

6 3. Moneys in the fund shall consist of moneys received from enrollees
7 and participating employers pursuant to automatic payroll deductions and
8 contributions to savings made under the New York state secure choice
9 savings program pursuant to article fourteen-C of the retirement and
10 social security law.

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

15 5. The amounts deposited in the fund shall not constitute property of
16 the state and the fund shall not be construed to be a department, insti-
17 tution, or agency of the state. Amounts on deposit in the fund shall not
18 be commingled with state funds and the state shall have no claim to or
19 against, or interest in, such funds.

20 § 99-bb. New York state secure choice administrative fund. 1. There
21 is hereby established within the joint custody of the commissioner of
22 taxation and finance and the state comptroller in consultation with the
23 New York state secure choice savings program board, a new fund to be
24 known as the New York state secure choice administrative fund.

25 2. The New York state secure choice savings program board shall use
26 moneys in the administrative fund to pay for administrative expenses it
27 incurs in the performance of its duties under the New York state secure
28 choice savings program pursuant to article fourteen-C of the retirement
29 and social security law.

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

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

39 § 4. This act shall take effect immediately.