STATE OF NEW YORK

4344--B

2017-2018 Regular Sessions

IN SENATE

February 10, 2017

Introduced by Sens. SAVINO, ADDABBO, ALCANTARA, AVELLA, BAILEY, CARLUCCI, GALLIVAN, HAMILTON, HOYLMAN, KRUEGER, LANZA, LATIMER, PERALTA, RANZENHOFER, SANDERS, STAVISKY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

ARTICLE 14-C

NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM

Section 570. Definitions.

571. Program established.

572. Composition of the board.

573. Fiduciary duty.

574. Duties of the board.

575. Risk management.

576. Investment firms.

577. Investment options.

578. Benefits.

579. Employer and employee information packets and disclosure forms.

580. Program implementation and enrollment.

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

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581. Payments.
582. Duty and liability of the state.
583. Duty and liability of participating employers.
584. Audit and reports.
585. Delayed implementation.

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

1. "Board" shall mean the New York secure choice savings program board established under this article.

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

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

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

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 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.

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

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

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

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

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

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

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

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

§ 571. Program established. There is hereby established a retirement savings program in the form of 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.

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

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

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

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

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

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

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

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

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

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

3. The initial appointments shall be as follows: one public representative for four years; the representative of participating employers for three years; and the representative of enrollees for three years. Thereafter, all the governor's appointees shall be for terms of four years.

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

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

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

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

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

3. by using any contributions paid by employees and employers remitting employees' own contributions into the trust 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.

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

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

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

(b) maximizes participation, savings, and sound investment practices including considering the use of automatic enrollment as allowed under federal law;

(c) maximizes simplicity, including ease of administration for participating employers and enrollees;

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

(e) ensures the portability of benefits; and

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

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

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

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

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

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

7. Determine the number and duties of staff members needed to administer the program and assemble such a staff, including, as needed, employing staff, and appointing a program administrator.

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

9. Evaluate and establish the process by which an enrollee is able to contribute a portion of his or her wages to the program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the program, including, but not limited to, contracting with financial service companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or similar arrangements.

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

11. Evaluate and establish the process by which an employee may voluntarily enroll in and make contributions to the program.

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

13. Evaluate 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.

14. 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 fund for that purpose. Thereafter, all administrative costs of the fund, 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 the fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment. The board shall keep annual administrative expenses as

low as possible, but in no event shall they exceed 0.75% of the total trust balance.

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

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

17. Facilitate education and outreach to employers and employees.

18. Facilitate compliance by the program with all applicable requirements for the program under the Internal Revenue Code, including tax qualification requirements or any other applicable law and accounting requirements.

19. Carry out the duties and obligations of the program in an effective, efficient, and low-cost manner.

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

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

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

23. Determine employee rights and enforcement of penalties.

§ 575. Risk management. The board shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. This investment policy shall prohibit the board, program, and fund from borrowing for investment purposes. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the program and fund portfolio, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing.

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

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

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

§ 577. Investment options. 1. The board shall establish as an investment option a life-cycle fund with a target date based upon the age of the enrollee. This shall be the default investment option for enrollees

who fail to elect an investment option unless and until the board designates by rule a new investment option as the default.

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

(a) a conservative principal protection fund;

(b) a growth fund;

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

(d) an annuity fund.

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

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

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

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

3. The employee information packet 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 mechanics of how to make contributions to the program;

(c) how to opt out of the program;

(d) how to 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) that they can opt out after they have enrolled;
(g) the process for withdrawal of retirement savings;
(h) the process for selecting beneficiaries of their retirement savings;
(i) how to obtain additional information about the program;
(j) 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;
(k) information on how to access any financial literacy programs implemented by the comptroller;
(l) that the program is not an employer-sponsored retirement plan; and
(m) that the program fund is not guaranteed by the state.
4. The employee information packet shall also include a form for an employee to note his or her decision to opt out of participation in the program or elect to participate with a level of employee contributions other than three percent.
5. Participating employers shall supply the employee information packet to existing employees at least one month prior to the participating employers' launch of the program. Participating employers shall supply the employee information packet to new employees at the time of hiring, and new employees may opt out of participation in the program or elect to participate with a level of employee contributions other than three percent at that time.
§ 580. Program implementation and enrollment. Except as otherwise provided in this article, the program shall be implemented, and enrollment of employees shall begin, within twenty-four months after the effective date of this article. The provisions of this section shall be in force after the board opens the program for enrollment.
1. Each participating employer may establish a payroll deposit retirement savings arrangement to allow each employee to participate in the program and begin employee enrollment at most nine months after the board opens the program for enrollment.
2. Enrollees shall have the ability to select a contribution level into the fund. 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. Notwithstanding any other provision of law, any participating enrollee, whose employer fails to make employee deductions in accordance with the provisions in section one hundred ninety-three of the labor law, may bring an action, pursuant to section one hundred ninety-eight of the labor law, to recover such monies. Further, any participating employer, who fails to make employee deductions in accordance with the provisions in section one hundred ninety-three of the labor law, shall be subject to the penalties and fines provided for in section one hundred ninety-eight-a of the labor law.
3. Enrollees may select an investment option from the permitted investment options listed in this article. Enrollees may change their investment option at any time, subject to rules promulgated by the

board. In the event that an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected by the board as the default under this article. If the board has not selected a default investment option under this article, then an enrollee who fails to select an investment option shall be placed in the life-cycle fund investment option.

4. Following initial implementation of the program pursuant to this section, at least once every year, participating employers 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 opts out of the program who subsequently wants to participate through the participating employer's payroll deposit retirement savings arrangement may only enroll during the participating employer's designated open enrollment period or if permitted by the participating employer at an earlier time.

6. Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan instead of having a payroll deposit retirement savings arrangement to allow employee participation in the program.

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

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

(b) The board shall, in conjunction with the office of the state comptroller, establish and maintain a secure website wherein enrollees may log in and acquire information regarding contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. Such website must also include information for the enrollees regarding other options available to the employee and how they can transfer their accounts to other programs should they wish to do so. Such website may include any other information regarding the program as the board may determine.

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

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

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

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

2. No state board, commission, or agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from

particular investments selected under this article, except for any liability that arises out of a breach of fiduciary duty.

§ 583. Duty and liability of participating employers. 1. Participating employers shall not have any liability for an employee's decision to participate in, or opt out of, the program or for the investment decisions of the board or of any enrollee.

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

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

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

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

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

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

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

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

2. The fund shall include the individual retirement accounts of enrollees, which shall be accounted for as individual accounts.

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

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

5. The amounts deposited in the fund shall not constitute property of the state and the fund shall not be construed to be a department, institution, or agency of the state. Amounts on deposit in the fund shall not be commingled with state funds and the state shall have no claim to or against, or interest in, such funds.

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

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

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

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

§ 4. This act shall take effect immediately.