

STATE OF NEW YORK

2885

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sens. GOUNARDES, KAPLAN -- read twice and ordered printed,
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to providing protection to certain retirees from pension de-risking transactions; and to amend the civil practice law and rules, in relation to statutorily exempt payments

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

1 Section 1. The insurance law is amended by adding a new section 3219-a
2 to read as follows:

3 § 3219-a. Pension de-risking transactions with an annuity. (a) For
4 purposes of this section: (1) "Employer" means any person engaged in
5 business in this state who has two or more employees, but does not
6 include the state or any political subdivision thereof;

7 (2) "Employee pension benefit plan" means an "employee pension benefit
8 plan", as defined in 29 USC 1002(2)(A); and

9 (3) "Pension de-risking transaction" means any transaction that
10 involves the transfer of pension benefits (not including health care
11 benefits) from a pension plan protected under the Employee Retirement
12 Income Security Act ("ERISA") to a substitute pension benefit provider
13 such as an insurance company licensed and regulated under state law.

14 (b) Any insurer issuing an allocated or unallocated group annuity
15 contract to an employer or an employee defined pension benefit plan on
16 behalf of an employer, for the purpose of providing retirement benefits
17 to employees or former employees ("retirees") of the employer, which
18 annuity benefits will no longer be protected under the federal Employee
19 Retirement Income Security Act of 1974 ("ERISA") and the federal Pension
20 Benefit Guaranty Corporation ("PBGC") shall provide the following infor-
21 mation to the retirees pursuant to regulations adopted by the super-
22 intendent:

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

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1 (1) a clear statement that payments to annuitants under an annuity
2 contract issued pursuant to this section are exempt from the claims of
3 creditors;

4 (2) a statement that the retirees will no longer have protection under
5 ERISA and the PBGC;

6 (3) the identity and contact information for the New York Life and
7 Health Insurance Guaranty Association, or any substitute or replacement
8 guaranty association that provides coverage to annuitants residing in
9 New York in the event of the insurer's financial impairment or insolve-
10 ncy, as set forth on a publicly available website such as the website
11 maintained by the Life Insurance Company Guaranty Corporation of New
12 York (www.nylifega.org); and

13 (4) mandatory annual disclosures to all retirees whose benefits are
14 transferred to an insurance company or alternative benefit provider for
15 the purpose of providing retirement benefits, of the following: funding
16 levels of all assets relative to expected liabilities under the assumed
17 pension benefit schedules, investment performance summary by asset
18 class, investment performance detail by asset class, expenses associated
19 with any group annuity contract, and changes in actuarial assumptions,
20 if any.

21 (c) No allocated or unallocated group annuity contract issued by an
22 insurer to an employer or an employee defined pension benefit plan on
23 behalf of an employer, for the purpose of providing retirement benefits
24 to employees or former employees of the employer, which annuity benefits
25 will no longer be protected under the federal Employee Retirement Income
26 Security Act of 1974 and the federal Pension Benefit Guaranty Corpo-
27 ration may be further transferred or assumed by another insurer without
28 confirmation by the superintendent that the insurer assuming the obli-
29 gations of such allocated or unallocated group annuity contract has the
30 financial strength to fulfill its obligations under such contract. The
31 appropriate standard to be applied by the superintendent shall be 400%
32 of company action level risk based capital with no negative trend as
33 defined by the 2012 NAIC risk-based capital (RBC) for insurers model
34 act.

35 (d) The proceeds of any allocated or unallocated group annuity
36 contract issued by an insurer to an employer or an employee defined
37 pension benefit plan on behalf of an employer, for the purpose of
38 providing retirement benefits to retirees of the employer, which annuity
39 benefits will no longer be protected under ERISA and the federal PBGC
40 shall be exempt from application to the satisfaction of money judgments
41 under section fifty-two hundred five of the civil practice law and
42 rules.

43 § 2. Paragraph 2 of subdivision (1) of section 5205 of the civil prac-
44 tice law and rules, as amended by chapter 24 of the laws of 2009, is
45 amended to read as follows:

46 2. For purposes of this article, "statutorily exempt payments" means
47 any personal property exempt from application to the satisfaction of a
48 money judgment under any provision of state or federal law. Such term
49 shall include, but not be limited to, payments from any of the following
50 sources: social security, including retirement, survivors' and disabili-
51 ty benefits, supplemental security income or child support payments;
52 veterans administration benefits; public assistance; workers' compen-
53 sation; unemployment insurance; public or private pensions; railroad
54 retirement; and black lung benefits. "Statutorily exempt payments"
55 shall specifically include any annuity proceeds whose benefits are
56 transferred to an insurance company or alternative benefit provider for

1 the purpose of providing retirement benefits pursuant to section three
2 thousand two hundred nineteen-a of the insurance law in a pension
3 de-risking transfer.

4 § 3. This act shall take effect on the one hundred twentieth day after
5 it shall have become a law and shall apply to all policies and contracts
6 issued, renewed, modified, altered, or amended on or after such date.