

# 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 Assem-  
bly, 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 insolvenc-  
10 cy, 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.