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:

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

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

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

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

(b) Any insurer issuing an allocated or unallocated group annuity contract to an employer or an employee defined pension benefit plan on behalf of an employer, for the purpose of providing retirement benefits to employees or former employees ("retirees") of the employer, which annuity benefits will no longer be protected under the federal Employee Retirement Income Security Act of 1974 ("ERISA") and the federal Pension Benefit Guaranty Corporation ("PBGC") shall provide the following information to the retirees pursuant to regulations adopted by the superintendent:

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

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

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

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

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

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

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

§ 2. Paragraph 2 of subdivision (l) of section 5205 of the civil practice law and rules, as amended by chapter 24 of the laws of 2009, is amended to read as follows:

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

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

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