# STATE OF NEW YORK

9045

# IN SENATE

May 5, 2022

Introduced by Sen. MANNION -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to the investment standard for investments of the New York state college choice tuition savings program and the New York achieving a better life experience (ABLE) savings account program

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

Section 1. Paragraph (a) of subdivision 3 of section 78 of the state finance law, as amended by chapter 328 of the laws of 2003, is amended to read as follows:

(a) The comptroller, as trustee, shall invest the assets of the trust fund [~~in investments authorized by article four-A of the retirement and social security law, provided however, that:~~

~~(i) the provisions of paragraph (a) of subdivision two of section one hundred seventy-seven of the retirement and social security law shall not apply except for the first clause of subparagraph (ii) of such paragraph; and~~

~~(ii) notwithstanding the provisions of subdivision seven of section one hundred seventy-seven of the retirement and social security law or any other law to the contrary, the assets of the trust fund may be invested in any funding agreement issued in accordance with section three thousand two hundred twenty-two of the insurance law by a domestic life insurance company or a foreign life insurance company doing business in this state, subject to the following:~~

~~(1) such a funding agreement may provide for a guaranteed minimum rate of return;~~

~~(2) such a funding agreement may be allocated as either a separate account or a general account of the issuer, as the comptroller may decide;~~

~~(3) total investments of the trust fund pursuant to this paragraph in any funding agreements issued by a single life insurance company which~~

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

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~~are allocated as a general account of the issuer shall not, in the aggregate, exceed three hundred fifty million dollars; and~~

~~(4) no assets of the trust fund shall be invested in any such funding agreement unless, at the time of such investment, the general obligations or financial strength of the issuer have received either the highest or second highest rating by two nationally recognized rating services or by one nationally recognized rating service in the event that only one such service rates such obligations~~] with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

§ 2. Paragraph (a) of subdivision 3 of section 99-x of the state finance law, as added by chapter 576 of the laws of 2015, is amended to read as follows:

(a) The comptroller, as trustee, shall invest the assets of the trust fund [~~in investments authorized by article four-A of the retirement and social security law, provided however, that: (i) the provisions of paragraph (a) of subdivision two of section one hundred seventy-seven of the retirement and social security law shall not apply except for the first clause of subparagraph (ii) of such paragraph; and (ii) notwithstanding the provisions of subdivision seven of section one hundred seventy-seven of the retirement and social security law or any other law to the contrary, the assets of the trust fund may be invested in any funding agreement issued in accordance with section three thousand two hundred twenty-two of the insurance law by a domestic life insurance company or a foreign life insurance company doing business in this state, subject to the following: (1) such a funding agreement may provide for a guaranteed minimum rate of return; (2) such a funding agreement may be allocated as either a separate account or a general account of the issuer, as the comptroller may decide; (3) total investments of the trust fund pursuant to this paragraph in any funding agreements issued by a single life insurance company which are allocated as a general account of the issuer shall not, in the aggregate, exceed three hundred fifty million dollars; and (4) no assets of the trust fund shall be invested in any such funding agreement unless, at the time of such investment, the general obligations or financial strength of the issuer have received either the highest or second highest rating by two nationally recognized rating services or by one nationally recognized rating service in the event that only one such service rates such obligations~~] with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

§ 3. This act shall take effect immediately.