

AMENDED IN ASSEMBLY MAY 4, 2005
AMENDED IN ASSEMBLY APRIL 25, 2005
AMENDED IN ASSEMBLY APRIL 19, 2005
AMENDED IN ASSEMBLY MARCH 17, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 310

Introduced by Assembly Member Umberg

February 10, 2005

An act to add Chapter 11 (commencing with Section 19999.8) to Part 2.6 of Division 5 of Title 2 of the Government Code, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 310, as amended, Umberg. Investment plans: *mandatory* defined contribution and other *mandatory* retirement ~~plans: liability~~ *plans*.

Existing law provides for the licensing and regulation of broker-dealers and investment advisers by the Department of Corporations under the Corporate Securities Law of 1968. Existing law requires the Department of Personnel Administration to ~~establish a 2-tiered retirement system~~, provide an alternate retirement system for new employees; and administer a retirement system for employees excluded from the Public ~~Employees~~ *Employees*' Retirement System.

This bill would impose various fees and requirements on persons performing investment or management services in connection with a mandatory defined contribution plan or other mandatory retirement plan established for state and local employees, including a requirement to, among others, offer certain investments, limit fees to

1.25% of total investments, and be insured. The bill would provide that those persons owe a fiduciary duty to the plan beneficiaries, and would set forth the liability of those and other associated persons for a breach of that duty. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) As part of their compensation and employee benefits, state
4 and local public employees are entitled to adequate, stable, and
5 secure retirement benefits. This right includes the right to
6 protection from the loss of retirement funds due to incompetent
7 investment advice or improper accounting of retirement funds.
8 Indeed, all California employees and retirees in both the private
9 and public sectors are entitled to minimum safeguards with
10 respect to their retirement investments.

11 (b) A defined contribution plan does not provide a guaranteed
12 benefit level at retirement and does not include disability or death
13 benefits. The balance in a defined contribution account may be
14 paid out as either a lump sum or a partial lump sum, in a set
15 number of installment payments, or it may be used to purchase
16 an annuity.

17 (c) Under a defined contribution plan, the employer is only
18 responsible for making the scheduled contributions, while the
19 employees bear all the investment risk.

20 SEC. 2. Chapter 11 (commencing with Section 19999.8) is
21 added to Part 2.6 of Division 5 of Title 2 of the Government
22 Code, to read:

23

24

CHAPTER 11. INVESTMENT PROVIDERS

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26 19999.8. (a) (1) A mandatory defined contribution plan or
27 other mandatory retirement plan established for state and local
28 government employees shall assess each investment provider a
29 fee for the costs associated with administration of the plan,
30 including the cost for a plan beneficiary to open, transfer, or
31 close a mandatory defined contribution plan account or other

1 mandatory retirement plan account. ~~No~~ *Except as provided in*
2 *paragraph (2), no* General Fund moneys shall be used to pay for
3 the administration of the plan or to meet any requirements of the
4 plan.

5 (2) *General Fund moneys may be used to supplement the*
6 *contribution of a state employee who participates in a mandatory*
7 *defined contribution plan or other mandatory retirement plan.*

8 (b) A mandatory defined contribution plan or other mandatory
9 retirement plan established under law for state and local
10 government employees shall offer a plan beneficiary investment
11 education services, including, but not limited to, disseminating
12 educational materials, providing retirement planning education,
13 and offering financial planning guidance on matters such as
14 investment diversification, investment risks, investment costs,
15 and asset allocation. The education services shall include
16 guidance on the appropriate investment portfolio to ensure
17 adequate, stable, and secure retirement benefits based on the plan
18 beneficiary's age, additional years expected to remain in the
19 workforce, risk tolerance, and other relevant factors.

20 19999.81. In order to qualify as an investment provider for a
21 mandatory defined contribution plan or other mandatory
22 retirement plan for state and local government employees, an
23 investment provider shall:

24 (a) Offer investments that have earned positive returns in at
25 least six of the 12 previous quarters.

26 (b) Limit its management and service fees to 1.25 percent of
27 total investments.

28 (c) Provide quarterly statements itemizing all fees charged.

29 19999.82. In order to qualify as an investment provider for a
30 mandatory defined contribution plan or other mandatory
31 retirement plan, the investment provider shall provide evidence
32 of:

33 (a) The investment provider's financial strength and stability.

34 (b) Adequate insurance to cover any and all potential liability
35 occurring by reason of any act or omission in rendering services
36 in connection with a mandatory defined contribution plan or
37 other mandatory retirement plan.

38 19999.83. An investment provider for a mandatory defined
39 contribution plan or other mandatory retirement plan shall
40 provide written disclosure of expenses paid directly or indirectly

1 by plan beneficiaries, including, but not limited to, penalties for
2 early withdrawals, presence of two-tier annuity features,
3 declining or fixed withdrawal charges, and surrender or deposit
4 charges.

5 19999.84. (a) An investment provider for a mandatory
6 defined contribution plan or other mandatory retirement plan
7 owes fiduciary duties to the plan beneficiary.

8 (b) An investment provider who breaches a fiduciary duty in
9 connection with the performance of services shall be liable to the
10 plan beneficiary. If the breach was intentional or reckless, the
11 fiduciary shall be liable for an amount up to treble damages for
12 losses sustained as a result of the intentional or reckless conduct.

13 (c) For an investment provider, every partner, principal
14 executive officer, or corporate director shall be jointly and
15 severally liable in the case of a breach of the investment
16 provider's fiduciary duty to the same extent as that person who
17 materially aids in the act or transaction constituting the violation.

18 (d) An investment provider who materially assists in any
19 breach of duty set forth in this section with the intent to deceive
20 or defraud is jointly and severally liable with any other person
21 liable under this section.

22 (e) All state and local government retirement systems and state
23 and local government employers shall have standing to assert
24 claims under this provision on behalf of a plan beneficiary.