Assembly Bill No. 310

Passed the Assembly September 1, 2005

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Chief Clerk of the Assembly

Passed the Senate August 30, 2005

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Secretary of the Senate

This bill was received by the Governor this _____ day of _______________, 2005, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER ________

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, Umberg. Investment plans: mandatory defined contribution and other mandatory retirement 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 provide an alternate retirement system for new employees and administer a retirement system for employees excluded from the Public 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 established for state and local employees, as defined, including requirements regarding minimum rates of return on assets, limits on management and service fees, and liability insurance. 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.

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

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

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

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

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

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

Chapter 11. Investment Providers

19999.8. (a) For the purposes of this section:

(1) “Mandatory defined contribution plan” means a plan required by the California Constitution or other state law and provided by a state or local government employer to its employees that requires employee participation and provides a pension benefit that is equal to the combined employer and employee contributions plus interest and net investments earnings, less administrative expenses and other costs, and in which the balance in the employee’s retirement account may be reduced as a result of investment losses.

(2) “State and local government employee” includes, but is not limited to, any employee of the state, a city, county, city and county, school district, the University of California, California State University, or any other political subdivision or public entity of this state, or organized under the laws of this state, or any department, instrumentality, or agency thereof.

(3) “Investment provider” means any individual, or group of individuals, employed to manage all or part of the investments regulated by this section.

(4) “Peer group of investment providers” means a group of equally situated investment providers that allows for a comparison of all investment products that are equal or very similar in their objective and characteristics.

(b) (1) A mandatory defined contribution plan established for state and local government employees shall assess each investment provider a fee for the costs associated with administration of the plan, including the cost for a plan beneficiary to open, transfer, or close a mandatory defined contribution plan account. Except as provided in paragraph (2), no General Fund moneys shall be used to pay for the administration of the plan or to meet any requirements of the plan.

(2) General Fund moneys may be used to supplement the contribution of a state employee who participates in a mandatory defined contribution plan.

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

19999.81. In order to qualify as an investment provider for a mandatory defined contribution plan for state and local government employees, an investment provider shall:

(a) Exceed the rate of return of the appropriate index for a specific asset class and a peer group of investment providers managing the same asset class for the previous five years, annualized.

(b) Limit its management and service fees to an amount lower or equal to the average of the amounts assessed by the peer group of investment providers for the respective asset class.

(c) Provide quarterly statements itemizing all fees charged.

19999.82. In order to qualify as an investment provider for a mandatory defined contribution plan, the investment provider shall provide evidence of:

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

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

19999.83. An investment provider for a mandatory defined contribution plan shall provide written disclosure of expenses paid directly or indirectly by plan beneficiaries, including, but not limited to, penalties for early withdrawals, presence of two-tier annuity features, declining or fixed withdrawal charges, and surrender or deposit charges.

19999.84. (a) An investment provider for a mandatory defined contribution plan owes fiduciary duties to the plan beneficiary.

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

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

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

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

Approved ______________________________, 2005

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Governor