

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1234

Introduced by Senators De León and Steinberg

(Principal coauthor: Assembly Member Furutani)

(Coauthors: Senators Hernandez, Pavley, and Price)

(Coauthors: Assembly Members Allen, Blumenfield, and Solorio)

February 23, 2012

An act to add Section 20139 to, and to add Title 21 (commencing with Section 100000) to, the Government Code, and to add Section 1088.9 to the Unemployment Insurance Code, relating to retirement savings plans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would enact the California Secure Choice Retirement Savings Trust Act, which would create the California Secure Choice Retirement Savings Trust to be administered by the California Secure Choice Retirement Savings Investment Board, which would also be established by the bill. The bill would require eligible employers, as defined, to offer a payroll deposit retirement savings arrangement so that eligible employees, as defined, could contribute a portion of their salary or wages to a retirement savings ~~plan~~ *program* account in the California Secure Choice Retirement Savings ~~Plan~~ *Program*, as specified. The bill would require eligible employees to participate in the ~~plan~~ *program*, unless the employee opts out of the ~~plan~~ *program*, as specified. The bill

would require a specified percentage of the annual salary or wages of an eligible employee participating in the ~~plan~~ *program* to be deposited in the California Secure Choice Retirement Savings Trust, which would be segregated into a program fund and an administrative fund, both of which would be continuously appropriated to the board for purposes of the act. The bill would limit expenditures from the administrative fund, as specified. The bill would also require the board to establish a Gain and Loss Reserve Account within the program fund.

The bill would require *an employer to use* the Employment Development Department ~~to create an exemption certificate to create~~ an option for employees to elect to opt out of the ~~plan~~ *program*. The bill would, commencing January 1, 2014, require the Employment Development Department to assess a penalty on any eligible employer that fails to make the ~~plan~~ *program* available to eligible employees, as specified. The bill also would make a statement of legislative findings. *The bill would provide that the state would have no liability for the payment of the benefits under the program, as specified.*

The bill would provide that the operational provisions of the California Secure Choice Retirement Savings Trust Act shall be operative only if sufficient funds are made available through a nonprofit or private entity or federal funding, as specified, to allow the board to study, develop, and obtain the approvals necessary to implement the program and the board determines that the program can be self-sustaining.

Existing law establishes the Board of Administration of the Public Employees' Retirement System and vests the board with various powers and duties.

This bill would authorize that board to administer funds in the California Secure Choice Retirement Savings Trust, as specified.

Vote: majority. Appropriation: yes. 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 the following:
- 2 (a) California workers without access to an employer-sponsored
- 3 retirement plan need a seamless, lifelong savings system, providing
- 4 them with the opportunity to build their assets and helping them
- 5 to attain their future financial stability through a *program that*
- 6 *offers secure; and portable retirement savings* ~~plan~~.

1 (b) According to recent data by the University of California,
2 Berkeley, Center for Labor Research and Education, middle class
3 families in California are at significant risk of not having enough
4 retirement income to meet even basic expenses, as nearly 50
5 percent of middle-income California workers will retire at or near
6 poverty.

7 (c) The lack of sufficient retirement savings poses a significant
8 threat to the state's ~~already-strained safety-net~~ *already strained*
9 *safety net* programs and also threatens to undermine California's
10 fiscal stability and ongoing economic recovery.

11 (d) The looming retirement security crisis exacerbates the state's
12 high unemployment rate, as seniors are forced to work longer and
13 fewer jobs are available for younger workers trying to enter the
14 workforce.

15 (e) Providing California workers with a guaranteed retirement
16 income to supplement social security, traditionally funded by stable
17 employer contributions via a defined benefit, employer-based
18 pension plan, is optimal to ensure that workers accumulate the
19 benefits they need for a secure retirement. California must pursue
20 guaranteed replacement income programs, including defined benefit
21 plans, for all working Californians. Establishing and offering a
22 universal retirement savings ~~plan~~ *program* to provide a vital
23 supplement to social security income would be an important step
24 toward ensuring the retirement security ~~for~~ *of* all working
25 Californians.

26 (f) Though employer-sponsored guaranteed retirement income
27 programs are valuable savings tools for workers, given the
28 changing needs and work habits of California's workers, they alone
29 are insufficient to afford workers a secure retirement. California
30 workers need additional retirement savings options to ensure their
31 retirement security.

32 (g) Private individuals have limited access to attractive financial
33 products that allow them to convert their savings into secure,
34 lifelong retirement income.

35 (h) Employers in the private sector that want to offer a retirement
36 savings plan for their employees often face significant barriers in
37 setting up their own workplace plans. In addition to the costs of
38 hiring service providers and paying fees, employer-sponsored plans
39 can be complex to maintain and administer, and they are subject

1 to an array of rules and regulations, including fiduciary
2 responsibility.

3 (i) In creating an additional retirement savings program for its
4 workers, California would supplement existing savings options,
5 thus assisting California's working men and women to save for
6 retirement. This program would be funded by the program's
7 participants without incurring liabilities to the state.

8 (j) The California Secure Choice Retirement Savings Trust
9 established by this act will promote expanded retirement security
10 for working Californians.

11 (k) The implementation and effectuation of the California Secure
12 Choice Retirement Savings Trust constitutes the carrying out of a
13 valid and vital public purpose.

14 SEC. 2. Section 20139 is added to the Government Code, to
15 read:

16 20139. The board shall have the power to administer funds in
17 the California Secure Choice Retirement Savings Trust pursuant
18 to a contract with the California Secure Choice Retirement Savings
19 Investment Board as provided in Title 21 (commencing with
20 Section 100000) and to help all California workers to plan and
21 save for retirement.

22 SEC. 3. Title 21 (commencing with Section 100000) is added
23 to the Government Code, to read:

24
25 TITLE 21. THE CALIFORNIA SECURE CHOICE
26 RETIREMENT SAVINGS TRUST ACT
27

28 100000. For purposes of this title the following definitions
29 shall apply:

30 (a) "Board" means the California Secure Choice Retirement
31 Savings Investment Board.

32 (b) "California Secure Choice Retirement Savings—~~Plan~~"
33 ~~Program~~" or "~~plan~~" "*program*" means a retirement savings ~~plan~~
34 *program* offered by the California Secure Choice Retirement
35 Savings Trust.

36 (c) (1) "Eligible employee" means a person who is employed
37 by an eligible employer.

38 (2) "Eligible employee" does not include:

39 (A) Any employee covered under the federal Railway Labor
40 Act (45 U.S.C. Sec. 151), or any employee engaged in interstate

1 commerce so as not to be subject to the legislative powers of the
2 state, except insofar as application of this title is authorized under
3 the United States Constitution or laws of the United States.

4 (B) Any employee covered by a valid collective bargaining
5 agreement that expressly provides for an employee pension benefit
6 plan for those employees as defined in the federal Employee
7 Retirement Income Security Act of 1974, as amended (29 U.S.C.
8 Sec. 1002).

9 (d) “Eligible employer” means a person or entity engaged in a
10 business, industry, profession, trade, or other enterprise in the state,
11 whether for profit or not for profit, excluding the federal
12 government, the state, any county, any municipal corporation, or
13 any of the state’s units or instrumentalities, that has five or more
14 employees and that satisfies the requirements to establish or
15 participate in a payroll deposit retirement savings arrangement.

16 (e) “Participating employer” means an eligible employer that
17 provides a payroll deposit retirement savings arrangement provided
18 for by this title for eligible employees.

19 (f) “Payroll deposit retirement savings arrangement” means an
20 arrangement by which an employer makes its payroll system
21 available to employees to remit payroll deduction contributions to
22 a retirement savings ~~plan~~ program.

23 (g) “Stated interest rate” means the rate of interest creditable to
24 ~~plan~~ program accounts as determined by the board pursuant to
25 subdivision (c) of Section 100005.

26 (h) “Trust” means the California Secure Choice Retirement
27 Savings Trust established by this title.

28 100002. (a) There is hereby created the California Secure
29 Choice Retirement Savings Investment Board, which shall consist
30 of the Treasurer, the Director of Finance, the Controller, an
31 individual with retirement savings and investment expertise
32 appointed by the Senate Committee on Rules, a small business
33 representative and a public member each appointed by the
34 Governor, and an employee representative appointed by the
35 Speaker of the Assembly. The Treasurer shall serve as chair of the
36 board.

37 (b) The board shall annually prepare and adopt a written
38 statement of investment policy. The board shall consider the
39 statement of investment policy and any changes in the investment
40 policy at a public hearing.

(c) The board shall approve an investment management entity or entities. Not later than 30 days after the close of each month, the board shall place on file for public inspection during business hours a report with respect to investments made pursuant to this section and a report of deposits in financial institutions. The investment manager shall report the following information to the board within 20 days following the end of the each month:

(1) The type of investment, name of the issuer, date of maturity, and the par and dollar amount invested in each security, investment, and money within the program fund.

(2) The weighted average maturity of the investments within the program fund.

(3) Any amounts in the program fund that are under the management of private money managers.

(4) Any amounts in the program fund that are under the management of the Board of Administration of the Public Employees' Retirement System.

(5) The market value as of the date of the report and the source of this valuation for each security within the program fund.

(6) A description of compliance with the statement of investment policy.

100004. (a) There is hereby established a retirement savings trust known as the California Secure Choice Retirement Savings Trust to be administered by the board for the purpose of promoting greater retirement savings for California private employees in a convenient, voluntary, low cost, and portable manner. The California Secure Choice Retirement Savings Trust, as a self-sustaining trust, shall pay all costs of administration out of earnings on moneys on deposit therein.

(b) The board shall segregate moneys received by the California Secure Choice Retirement Savings Trust into two funds, which shall be identified as the program fund and the administrative fund. Notwithstanding Section 13340, moneys in the trust are hereby continuously appropriated, without regard to fiscal years, to the board for the purposes of this title.

(c) Moneys in the program fund may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with the Board of Administration of the Public Employees' Retirement System, or private money managers, or both, as determined by the board.

(d) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by this title. On an annual basis, expenditures from the administrative fund shall not exceed more than 1 percent of the total program fund. All costs of administration of the trust shall be paid out of the administrative fund.

100004.5. (a) The board shall establish a segregated account within the program fund to be known as the Gain and Loss Reserve Account, and the board shall have sole authority over the account. The Gain and Loss Reserve Account shall be maintained for the ~~plan~~ program and may be used to credit interest at the stated interest rate for ~~plan~~ program years in which the board determines that the stated interest rate cannot be met from investment earnings.

(b) The board shall establish a goal for the balance of the Gain and Loss Reserve Account and shall periodically review the sufficiency of the reserve account based on the recommendations of the board's actuary.

(c) The board may allocate excess earnings of the ~~plan~~ program with respect to assets attributable to the ~~plan~~ program to the Gain and Loss Reserve Account. In addition, the board may allocate any liability gains and losses to the Gain and Loss Reserve Account. Based on an actuarial valuation following each ~~plan~~ program year, the board shall determine annually the amount, if any, that is to be allocated to the Gain and Loss Reserve Account for that ~~plan~~ program year. In determining whether to allocate excess earnings to the Gain and Loss Reserve Account, the board shall consider all of the following:

- (1) Whether or not the ~~plan~~ program has excess earnings.
 - (2) The sufficiency of the Gain and Loss Reserve Account in light of the goal established pursuant to subdivision (b).
 - (3) The amount required for the ~~plan's~~ program's administrative costs.
 - (4) The amount required for crediting individuals' accounts at the stated interest rate.
- (d) In determining whether to allocate liability gains and losses to the Gain and Loss Reserve Account, the board shall consider the matters described in paragraphs (2), (3), and (4) of subdivision (c).

1 (e) Any contributions paid by employees and employers into the
2 California Secure Choice Retirement Savings Trust shall be used
3 exclusively for the purpose of paying benefits to the participants
4 of the California Secure Choice Retirement Savings Program, for
5 the cost of administration of the program, and for investments
6 made for the benefit of the program.

7 100005. (a) The California Secure Choice Retirement Savings
8 ~~Plan~~ Program shall include, as determined by the board, one or
9 more payroll deposit retirement savings-~~plan~~ arrangements.

10 (b) Individual accounts under the California Secure Choice
11 Retirement Savings-~~Plan~~ Program shall be nominal accounts.
12 Individual contributions and any employer contributions on behalf
13 of the individual that are specifically identified as creditable to the
14 ~~plan~~ program shall be treated as credits to the individual's
15 California Secure Choice Retirement Savings-~~Plan~~ Program
16 account, together with interest credited at the stated interest rate
17 and any additional earnings credited thereon. The balance of the
18 credits in an individual's account shall determine the amount to
19 which the individual is entitled under the-~~plan~~ program upon
20 termination of coverage by the-~~plan~~ program. The individual shall
21 not have the right or claim to any specific assets of the account,
22 program, ~~plan~~, or program fund.

23 (c) (1) Prior to July 1 of the initial-~~plan~~ program year, and prior
24 to the beginning of each-~~plan~~ program year thereafter, the board
25 shall adopt a ~~plan~~ program amendment with respect to the-~~plan~~
26 program to declare the stated rate at which interest shall be credited
27 to-~~plan~~ program accounts for the following-~~plan~~ program year.

28 (2) Interest shall be credited to-~~plan~~ program accounts and shall
29 be computed at the stated interest rate on the balance of credits in
30 an individual's account and shall be compounded daily.

31 (d) An individual's retirement savings benefit under the-~~plan~~
32 program shall be an amount equal to the balance of the credits in
33 the individual's-~~plan~~ program account on the date the retirement
34 savings benefit becomes payable.

35 100006. (a) The board, in the capacity of trustee, shall have
36 the power and authority to do all of the following:

37 (1) Make and enter into contracts necessary for the
38 administration of the trust.

39 (2) Adopt a seal and change and amend it from time to time.

1 (3) Cause moneys in the program fund to be held and invested
2 and reinvested.

3 (4) Accept any grants, gifts, legislative appropriation, and other
4 moneys from the state, any unit of federal, state, or local
5 government or any other person, firm, partnership, or corporation
6 for deposit to the administrative fund or the program fund.

7 (5) Appoint a program administrator and determine the duties
8 of the program administrator and other staff as necessary and set
9 their compensation.

10 (6) Make provisions for the payment of costs of administration
11 and operation of the trust.

12 (7) Employ staff.

13 (8) Retain and contract with the Board of Administration of the
14 Public Employees' Retirement System, private financial
15 institutions, other financial and service providers, consultants,
16 actuaries, counsel, auditors, third-party administrators, and other
17 professionals as necessary.

18 (9) Procure insurance against any loss in connection with the
19 property, assets, or activities of the trust, and secure private
20 underwriting to insure the retirement savings benefit that is
21 guaranteed to ~~plan~~ *program* participants.

22 (10) Procure insurance indemnifying each member of the board
23 from personal loss or liability resulting from a member's action
24 or inaction as a member of the board.

25 (11) Set minimum and maximum investment levels.

26 (12) Collaborate and cooperate with the Board of Administration
27 of the Public Employees' Retirement System, private financial
28 institutions, service providers, and business, financial, trade,
29 membership, and other organizations to the extent necessary or
30 desirable for the effective and efficient design, implementation,
31 and administration of the program and to maximize outreach to
32 eligible employers and eligible employees.

33 (13) Cause expenses incurred to initiate, implement, maintain,
34 and administer the program to be paid from contributions to, or
35 investment returns or assets of, the program ~~or plans~~ or
36 arrangements established under the program, to the extent permitted
37 under state and federal law.

38 (14) Facilitate compliance by the retirement savings ~~plans~~
39 *program* or arrangements established under the program with all
40 applicable requirements for the ~~plans~~ *program* under the Internal

1 Revenue Code of 1986, including tax qualification requirements
2 or any other applicable law and accounting requirements, including
3 providing or arranging for assistance to ~~plan~~ *program* sponsors
4 and individuals in complying with applicable law and tax
5 qualification requirements in a cost-effective manner.

6 (15) Carry out the duties and obligations of the California Secure
7 Choice Retirement Savings Trust pursuant to this title and exercise
8 any and all other powers as may be reasonably necessary for the
9 effectuation of the purposes, objectives, and provisions of this title
10 pertaining to the trust.

11 (b) The board shall adopt regulations it deems necessary to
12 implement this title consistent with the federal Internal Revenue
13 Code and regulations issued pursuant to that code to ensure that
14 ~~this~~ *the* program meets all criteria for federal tax-deferral or
15 tax-exempt benefits, or both.

16 100008. In addition to the powers and authority granted to the
17 board pursuant to Section 100006, the board shall have the power
18 and authority to do the following:

19 (a) Cause the retirement savings ~~plans~~ *program* or arrangements
20 established under the program to be designed, established, and
21 operated, in a manner consistent with all of the following:

22 (1) In accordance with best practices for retirement savings
23 vehicles.

24 (2) To maximize participation, saving, and sound investment
25 practices, and appropriate selection of default investments.

26 (3) With simplicity, ease of administration for participating
27 employers, and portability of benefits.

28 (b) Arrange for collective, common, and pooled investment of
29 assets of the retirement savings ~~plans~~ *program* or arrangements,
30 including investments in conjunction with other funds with which
31 those assets are permitted to be collectively invested, with a view
32 to saving costs through efficiencies and economies of scale.

33 (c) Explore and establish investment options that offer
34 employees guaranteed returns on contributions and the conversion
35 of retirement savings account balances to secure retirement income
36 without incurring debt or liabilities to the state.

37 (d) Disseminate educational information concerning saving and
38 planning for retirement.

39 (e) Disseminate information concerning the tax credits available
40 to small business owners for establishing new retirement plans

1 and the federal saver's tax credit available to lower and
2 moderate-income households for saving in plans or arrangements.

3 (f) Submit progress and status reports to participating employers
4 and eligible employees.

5 (g) If necessary, determine the eligibility of an employer,
6 employee, or other individual to participate in the program.

7 (h) Evaluate and establish the process by which an eligible
8 employee of an eligible employer is able to contribute a portion
9 of his or her salary or wages to the ~~plan~~ *program* for automatic
10 deposit of those contributions and the participating employer
11 provides a payroll deposit retirement savings arrangement to
12 forward the employee contribution and related information to the
13 program or its agents. This may include, but is not limited to,
14 financial services companies and third-party administrators with
15 the capability to receive and process employee information and
16 contributions for payroll deposit retirement savings arrangements
17 or other ~~plans~~ or arrangements authorized by this title.

18 (i) Allow participating employers to use the program to
19 contribute to the account on their employees' behalf or match their
20 employees' contributions.

21 (j) Evaluate and establish the process by which an individual
22 or an employee of a nonparticipating employer may establish and
23 make contributions to the ~~plan~~ *program*.

24 100010. (a) After the board opens the ~~plan~~ *program* for
25 enrollment, any employer may choose to participate and make
26 the ~~plan~~ *program* available to employees.

27 (b) Beginning three months after the board opens the ~~plan~~
28 *program* for enrollment, eligible employers with more than 100
29 eligible employees *and* that do not offer an employer-sponsored
30 retirement plan shall make the ~~plan~~ *program* available to eligible
31 employees, and ~~all each eligible employees~~ *employee* shall be
32 enrolled in the ~~plan~~ *program*, unless the employee elects not to
33 participate in the ~~plan~~ *program* as provided in subdivision (e).

34 (c) Beginning six months after the board opens the ~~plan~~ *program*
35 for enrollment, eligible employers with more than 50 eligible
36 employees *and* that do not offer an employer-sponsored retirement
37 plan shall make the ~~plan~~ *program* available to eligible employees,
38 and ~~all each eligible employees~~ *employee* shall be enrolled in the
39 ~~plan~~ *program*, unless the employee elects not to participate in the
40 ~~plan~~ *program* as provided in subdivision (e).

(d) Beginning nine months after the board opens the ~~plan~~ program for enrollment, all other eligible employers that do not offer an employer-sponsored retirement plan shall make the ~~plan~~ program available to eligible employees, and ~~at each~~ eligible employees employee shall be enrolled in the ~~plan~~ program, unless the employee elects not to participate in the ~~plan~~ program as provided in subdivision (e).

(e) An eligible employee may elect to opt out of the ~~plan~~ program by making a notation on the exemption certificate produced by the Employment Development Department. If the employee elects to opt out, the employee shall, after 24 months, be enrolled in the ~~plan~~ program, unless the employee again elects to opt out as provided in this subdivision.

(f) Employers shall retain the option at all times to set up any type of retirement plan, such as a defined benefit plan or a 401(k) plan, instead of making the ~~plan~~ program available to its eligible employees.

(g) An eligible employee may also terminate his or her participation in the ~~plan~~ program at any time in a manner prescribed by the board and thereafter by making a notation on the exemption certificate produced by the Employment Development Department.

(h) Unless otherwise specified by the employee, a participating employee shall contribute 3 percent of the employee's annual salary or wages to the ~~plan~~ program.

(i) By regulation, the board may adjust the contribution amount set in subdivision (h) to no less than 2 percent and no more than 4 percent and may vary that amount within that 2 percent to 4 percent range for participating employees according to the length of time the employee has contributed to the ~~plan~~ program.

100016. Participating employers shall not be liable for the investment decisions of employees whose assets are deposited in the ~~plan~~ program.

100017. *The state shall have no liability for the payment of the retirement savings benefit that is guaranteed to program participants pursuant to this title. Any financial liability for the payment of benefits in excess of funds available under the program shall be borne by the underwriters pursuant to the contract entered into with the board on behalf of the program participants. The*

1 *state, and any of the funds of the state, shall have no obligation*
2 *for payment of the guaranteed benefits arising from this title.*

3 100018. (a) Notwithstanding Section 10231.5, the board shall
4 submit an annual audited financial report, prepared in accordance
5 with generally accepted accounting principles, on the operations
6 of the California Secure Choice Retirement Savings Trust by
7 August 1 to the Governor, the Controller, the State Auditor, and
8 the Legislature, pursuant to Section 9795. The annual audit shall
9 be made by an independent certified public accountant and shall
10 include, but not be limited to, direct and indirect costs attributable
11 to the use of outside consultants, independent contractors, and any
12 other persons who are not state employees.

13 (b) The annual audit shall be supplemented by the following
14 information prepared by the board:

15 (1) Any studies or evaluations prepared in the preceding year.

16 (2) A summary of the benefits provided by the trust including
17 the number of participants in the trust.

18 (3) Any other information that is relevant in order to make a
19 full, fair, and effective disclosure of the operations of the California
20 Secure Choice Retirement Savings Trust.

21 100022. The board shall initially conduct a market analysis to
22 determine whether the necessary conditions for implementation
23 of this title can be met, including, but not limited to, likely
24 participation rates, participants' comfort with various investment
25 vehicles and degree of risk, contribution levels, and the rate of
26 account closures and rollovers. The board shall conduct this
27 analysis only if sufficient funds are made available through a
28 nonprofit or private entity, federal funding, or an annual Budget
29 Act appropriation. The board shall forward its findings to the Chair
30 of the Senate Committee on Public Employment and Retirement
31 and to the Chair of the Assembly Committee on Public Employees,
32 Retirement and Social Security, pursuant to Section 9795.

33 100024. With the exceptions of subdivision (a) of Section
34 100002, and Sections 100022 and 100026, the provisions of this
35 title shall become operative only if funds are made available
36 through a nonprofit or private entity or federal funding, in amounts
37 sufficient to allow the board to study, develop, and obtain the
38 approvals necessary to implement this title and the board notifies
39 the Director of Finance that, based on its market analysis, the
40 provisions of this title can be self-sustaining pursuant to this title.

1 100026. This title shall be construed liberally in order to
2 effectuate its legislative intent. The purposes of this title and all
3 of its provisions with respect to the powers granted shall be broadly
4 interpreted to effectuate that intent and purposes and not as to any
5 limitation of powers.

6 SEC. 4. Section 1088.9 is added to the Unemployment
7 Insurance Code, to read:

8 1088.9. (a) The department shall have the power and duties
9 necessary to administer the enforcement of employer compliance
10 with Title 21 (commencing with Section 100000) of the
11 Government Code.

12 (b) An eligible employer shall use the department's exemption
13 ~~certificate filed by the eligible employee with the employer in a~~
14 ~~form and containing that information as the department prescribes,~~
15 to create an option for an eligible employee to note his or her
16 decision to opt out of utilizing the California Secure Choice
17 Retirement Savings ~~Plan Program~~. The department shall make the
18 opt-out notation simple and concise and in a manner it deems
19 necessary to appropriately evidence the employee's understanding
20 that he or she is choosing not to automatically deduct earnings to
21 save for retirement.

22 (c) ~~For each~~ Each eligible employer who, without good cause,
23 fails to make the California Secure Choice Retirement Savings
24 ~~Plan Program~~ available to all of its eligible employees pursuant
25 to Section 100010 of the Government Code, on or before 90 days
26 ~~after notice has been given to the employer~~ *service of notice by*
27 *the director pursuant to Section 1206* of his or her failure to
28 comply, ~~the department shall assess~~ *pay* a penalty of one thousand
29 dollars (\$1,000) for every eligible employee not offered the
30 retirement savings ~~plan program~~. The department shall enforce
31 this penalty as part of its existing investigation and audit function.

32 (d) *The provisions of this article, the provisions of Article 9*
33 *(commencing with Section 1176), with respect to refunds and*
34 *overpayments, and the provisions of Article 11 (commencing with*
35 *Section 1221), with respect to administrative appellate review*
36 *shall apply to the penalty imposed by this section. Penalties*
37 *collected pursuant to this section shall be deposited in the*
38 *contingent fund.*

39 (d)

- 1 (*e*) This section shall become operative on January 1, 2014.

O