

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 2, 2012

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, Ammiano, 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 program account in the California Secure Choice Retirement Savings Program, as specified. The bill would require eligible employees to participate in the program, unless the employee opts out of the program, as specified. The bill would specify risk management and investment policies that the board would be subject to regarding administration of the program. The bill would require a specified percentage of the annual salary or wages of an eligible employee participating in the 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, contingent upon sufficient interest and funding by vendors, as specified, require the board to establish a Retirement Investments Clearinghouse on its Internet Web site and a vendor registration process through which information about employer-sponsored retirement plans, and payroll deduction individual retirement accounts and annuities offered by private sector providers is made available for consideration by eligible employers.

The bill would require an employer to use the Employment Development Department exemption certificate to create an option for employees to elect to opt out of the program. The bill would, commencing 6 months after the program is ready to proceed, require the Employment Development Department to assess a penalty on any eligible employer that fails to make the 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, federal funding, or the annual Budget Act, 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.
7 (b) According to recent data by the University of California,
8 Berkeley, Center for Labor Research and Education, middle class
9 families in California are at significant risk of not having enough
10 retirement income to meet even basic expenses, as nearly 50
11 percent of middle-income California workers will retire at or near
12 poverty.
13 (c) The lack of sufficient retirement savings poses a significant
14 threat to the state's already strained safety net programs and also
15 threatens to undermine California's fiscal stability and ongoing
16 economic recovery.
17 (d) The looming retirement security crisis exacerbates the state's
18 high unemployment rate, as seniors are forced to work longer and
19 fewer jobs are available for younger workers trying to enter the
20 workforce.
21 (e) Providing California workers with a guaranteed retirement
22 income to supplement social security, traditionally funded by stable
23 employer contributions via a defined benefit, employer-based
24 pension plan, is optimal to ensure that workers accumulate the
25 benefits they need for a secure retirement. California must pursue
26 guaranteed replacement income programs, including defined benefit
27 plans, for all working Californians. Establishing and offering a
28 universal retirement savings program to provide a vital supplement

1 to social security income would be an important step toward
 2 ensuring the retirement security of all working Californians.

3 (f) Though employer-sponsored guaranteed retirement income
 4 programs are valuable savings tools for workers, given the
 5 changing needs and work habits of California’s workers, they alone
 6 are insufficient to afford workers a secure retirement. California
 7 workers need additional retirement savings options to ensure their
 8 retirement security.

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

12 (h) Employers in the private sector that want to offer a retirement
 13 savings plan for their employees often face significant barriers in
 14 setting up their own workplace plans. In addition to the costs of
 15 hiring service providers and paying fees, employer-sponsored plans
 16 can be complex to maintain and administer, and they are subject
 17 to an array of rules and regulations, including fiduciary
 18 responsibility.

19 (i) In creating an additional retirement savings program for its
 20 workers, California would supplement existing savings options,
 21 thus assisting California’s working men and women to save for
 22 retirement. This program would be funded by the program’s
 23 participants without incurring liabilities to the state.

24 (j) The California Secure Choice Retirement Savings Trust
 25 established by this act will promote expanded retirement security
 26 for working Californians.

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

30 SEC. 2. Section 20139 is added to the Government Code, to
 31 read:

32 20139. The board shall have the power to administer funds in
 33 the California Secure Choice Retirement Savings Trust pursuant
 34 to a contract with the California Secure Choice Retirement Savings
 35 Investment Board as provided in Title 21 (commencing with
 36 Section 100000) and to help all California workers to plan and
 37 save for retirement.

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

1 TITLE 21. THE CALIFORNIA SECURE CHOICE
2 RETIREMENT SAVINGS TRUST ACT

3
4 100000. For purposes of this title the following definitions
5 shall apply:

6 (a) “Board” means the California Secure Choice Retirement
7 Savings Investment Board.

8 (b) “California Secure Choice Retirement Savings Program” or
9 “program” means a retirement savings program offered by the
10 California Secure Choice Retirement Savings Trust.

11 (c) (1) “Eligible employee” means a person who is employed
12 by an eligible employer.

13 (2) “Eligible employee” does not include:

14 (A) Any employee covered under the federal Railway Labor
15 Act (45 U.S.C. Sec. 151), or any employee engaged in interstate
16 commerce so as not to be subject to the legislative powers of the
17 state, except insofar as application of this title is authorized under
18 the United States Constitution or laws of the United States.

19 (B) Any employee covered by a valid collective bargaining
20 agreement that expressly provides for a multiemployer Taft-Hartley
21 pension plan.

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

29 (e) “IRA” means an individual retirement account or individual
30 retirement annuity under Section 408(a) or 408(b) of Title 26 of
31 the United States Code.

32 (e)

33 (f) “Participating employer” means an eligible employer that
34 provides a payroll deposit retirement savings arrangement provided
35 for by this title for eligible employees.

36 (f)

37 (g) “Payroll deposit retirement savings arrangement” means an
38 arrangement by which an employer allows employees to remit
39 payroll deduction contributions to a retirement savings program.

1 (g) ~~“IRA” means an individual retirement account or individual~~
2 ~~retirement annuity under Section 408(a) or 408(b) of Title 26 of~~
3 ~~the United States Code.~~

4 (h) “Stated interest rate” means the rate of interest creditable to
5 program accounts as determined by the board pursuant to
6 subdivision (c) of Section ~~100005~~ 100008.

7 (i) “Trust” means the California Secure Choice Retirement
8 Savings Trust established by this title.

9 100002. (a) (1) There is hereby created within state
10 government the California Secure Choice Retirement Savings
11 Investment Board, which shall consist of seven members, with the
12 Treasurer serving as chair, as follows:

- 13 (A) The Treasurer.
- 14 (B) The Director of Finance, or his or her designee.
- 15 (C) The Controller.
- 16 (D) An individual with retirement savings and investment
17 expertise appointed by the Senate Committee on Rules.
- 18 (E) A small business representative appointed by the Governor.
- 19 (F) A public member appointed by the Governor.
- 20 (G) An employee representative appointed by the Speaker of
21 the Assembly.

22 (2) Members of the board appointed by the Governor, the Senate
23 Committee on Rules, and the Speaker of the Assembly shall serve
24 at the pleasure of the appointing authority.

25 (b) All members of the board shall serve without compensation.
26 Members of the board shall be reimbursed for necessary travel
27 expenses incurred in connection with their board duties.

28 (c) A board member, program administrator, and other staff of
29 the board shall not do any of the following:

- 30 (1) Directly or indirectly have any interest in the making of any
31 investment made for the program, or in the gains or profits accruing
32 from any investment made for the program.
- 33 (2) Borrow any funds or deposits of the trust, or use those funds
34 or deposits in any manner, for himself or herself or as an agent or
35 partner of others.
- 36 (3) Become an endorser, surety, or obligor on investments by
37 the board.

38 (d) The board and the program administrator and staff shall
39 discharge their duties with respect to the trust solely in the interest
40 of the program participants as follows:

1 (1) For the exclusive purposes of providing benefits to program
2 participants and defraying reasonable expenses of administering
3 the program.

4 (2) By investing with the care, skill, prudence, and diligence
5 under the circumstances then prevailing that a prudent person
6 acting in a like capacity and familiar with those matters would use
7 in the conduct of an enterprise of a like character and with like
8 aims.

9 (e) (1) The board shall annually prepare and adopt a written
10 statement of investment policy that includes a risk management
11 and oversight program. The board shall consider the statement of
12 investment policy and any changes in the investment policy at a
13 public hearing.

14 (2) The investment policy shall adhere to the following guiding
15 principles:

16 (A) The primary objective of the investment policy is to preserve
17 the safety of principal and provide a stable and low-risk rate of
18 return.

19 (B) The investment policy shall mitigate risk by maintaining a
20 balanced investment portfolio that provides assurance that no single
21 investment or class of investments will have a disproportionate
22 impact on the total portfolio.

23 (3) The following list represents the entire range of asset
24 categories that the board may consider and the only types of
25 investments which shall be permitted for the investment of funds:

26 (A) Domestic equities and international equities.

27 (B) Medium and long-term debt obligations of domestic
28 corporations.

29 (C) United States government and government sponsored entity
30 debt obligations.

31 (D) Real estate commingled funds that invest in publicly traded
32 real estate securities.

33 (E) Money market instruments, cash, and money market mutual
34 funds that are registered in the United States and denominated in
35 United States dollars.

36 (F) Investments in mutual funds, but limited to existing, rated
37 mutual funds, that are registered in the United States and
38 denominated in United States dollars.

39 (G) Insurance agreements.

40 (H) FDIC-insured bank products.

1 (4) Equities shall not exceed 50 percent of the overall asset
2 allocation of the fund.

3 (5) The investment policy shall also adhere to the following
4 restrictions:

5 (A) Borrowing for investment purposes, or leverage, is
6 prohibited.

7 (B) Instruments known as variable rate demand notes, floaters,
8 inverse floaters, leveraged floaters, and equity-linked securities
9 are not permitted. Investment in any instrument, which is
10 commonly considered a “derivative” instrument, including, but
11 not limited to, options, futures, swaps, caps, floors, and collars, is
12 prohibited.

13 (C) Contracting to sell securities not yet acquired in order to
14 purchase other securities for purposes of speculating on
15 developments or trends in the market is prohibited.

16 (6) The risk management and oversight program shall be
17 designed to ensure that an effective risk management system is in
18 place to monitor the risk levels of the California Secure Choice
19 Retirement Savings Program investment portfolio and ensure that
20 the risks taken are prudent and properly managed. The program
21 shall be managed to provide an integrated process for overall risk
22 management on both a consolidated and disaggregated basis, and
23 to monitor investment returns as well as risk to determine if the
24 risks taken are adequately compensated compared to applicable
25 performance benchmarks and standards.

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

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

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

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

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

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

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

8 100004. (a) There is hereby established a retirement savings
9 trust known as the California Secure Choice Retirement Savings
10 Trust to be administered by the board for the purpose of promoting
11 greater retirement savings for California private employees in a
12 convenient, voluntary, low cost, and portable manner. The
13 California Secure Choice Retirement Savings Trust, as a
14 self-sustaining trust, shall pay all costs of administration out of
15 earnings on moneys on deposit therein.

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

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

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

34 (e) Any contributions paid by employees and employers into
35 the trust shall be used exclusively for the purpose of paying benefits
36 to the participants of the California Secure Choice Retirement
37 Savings Program, for the cost of administration of the program,
38 and for investments made for the benefit of the program.

1 ~~100004.5.~~

2 100006. (a) The board shall establish a segregated account
3 within the program fund to be known as the Gain and Loss Reserve
4 Account, and the board shall have sole authority over the account.
5 The Gain and Loss Reserve Account shall be maintained for the
6 program and may be used to credit interest at the stated interest
7 rate for program years in which the board determines that the stated
8 interest rate cannot be met from investment earnings.

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

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

- 22 (1) Whether or not the program has excess earnings.
- 23 (2) The sufficiency of the Gain and Loss Reserve Account in
24 light of the goal established pursuant to subdivision (b).
- 25 (3) The amount required for the program’s administrative costs.
- 26 (4) The amount required for crediting individuals’ accounts at
27 the stated interest rate.

28 (d) In determining whether to allocate liability gains and losses
29 to the Gain and Loss Reserve Account, the board shall consider
30 the matters described in paragraphs (2), (3), and (4) of subdivision
31 (c).

32 ~~100005.~~

33 100008. (a) The California Secure Choice Retirement Savings
34 Program shall include, as determined by the board, one or more
35 payroll deposit ~~retirement savings~~ *IRA* arrangements.

36 (b) Individual accounts under the California Secure Choice
37 Retirement Savings Program shall be nominal accounts. ~~Individual~~
38 ~~contributions and any employer contributions~~ *Contributions* on
39 behalf of the individual that are specifically identified as creditable
40 to the program shall be treated as credits to the individual’s

1 California Secure Choice Retirement Savings Program account,
2 together with interest credited at the stated interest rate and any
3 additional earnings credited thereon. The balance of the credits in
4 an individual's account shall determine the amount to which the
5 individual is entitled under the program upon termination of
6 coverage by the program. The individual shall not have the right
7 or claim to any specific assets of the account, program, or program
8 fund.

9 (c) (1) Prior to July 1 of the initial program year, and prior to
10 the beginning of each program year thereafter, the board shall
11 adopt a program amendment with respect to the program to declare
12 the stated rate at which interest shall be credited to program
13 accounts for the following program year.

14 (2) Interest shall be credited to program accounts and shall be
15 computed at the stated interest rate on the balance of credits in an
16 individual's account and shall be compounded daily.

17 (d) An individual's retirement savings benefit under the program
18 shall be an amount equal to the balance of the credits in the
19 individual's program account on the date the retirement savings
20 benefit becomes payable.

21 ~~100006.~~

22 *100010.* (a) The board, in the capacity of trustee, shall have
23 the power and authority to do all of the following:

24 (1) Make and enter into contracts necessary for the
25 administration of the trust.

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

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

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

33 (5) Appoint a program administrator and determine the duties
34 of the program administrator and other staff as necessary and set
35 their compensation.

36 (6) Make provisions for the payment of costs of administration
37 and operation of the trust.

38 (7) Employ staff.

39 (8) Retain and contract with the Board of Administration of the
40 Public Employees' Retirement System, private financial

1 institutions, other financial and service providers, consultants,
2 actuaries, counsel, auditors, third-party administrators, and other
3 professionals as necessary.

4 (9) Procure insurance against any loss in connection with the
5 property, assets, or activities of the trust, and secure private
6 underwriting and reinsurance to manage risk and insure the
7 retirement savings benefit.

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

11 (11) Set minimum and maximum investment levels *in*
12 *accordance with contribution limits set for IRAs by the Internal*
13 *Revenue Code.*

14 (12) Collaborate and cooperate with the Board of Administration
15 of the Public Employees' Retirement System, private financial
16 institutions, service providers, and business, financial, trade,
17 membership, and other organizations to the extent necessary or
18 desirable for the effective and efficient design, implementation,
19 and administration of the program and to maximize outreach to
20 eligible employers and eligible employees.

21 (13) Cause expenses incurred to initiate, implement, maintain,
22 and administer the program to be paid from contributions to, or
23 investment returns or assets of, the program or arrangements
24 established under the program, to the extent permitted under state
25 and federal law.

26 (14) Facilitate compliance by the retirement savings program
27 or arrangements established under the program with all applicable
28 requirements for the program under the Internal Revenue Code of
29 1986, including tax qualification requirements or any other
30 applicable law and accounting requirements, including providing
31 or arranging for assistance to program sponsors and individuals
32 in complying with applicable law and tax qualification
33 requirements in a cost-effective manner.

34 (15) Carry out the duties and obligations of the California Secure
35 Choice Retirement Savings Trust pursuant to this title and exercise
36 any and all other powers as may be reasonably necessary for the
37 effectuation of the purposes, objectives, and provisions of this title
38 pertaining to the trust.

39 (b) The board shall adopt regulations it deems necessary to
40 implement this title consistent with the federal Internal Revenue

1 Code and regulations issued pursuant to that code to ensure that
2 the program meets all criteria for federal tax-deferral or tax-exempt
3 benefits, or both.

4 ~~100008.~~

5 *100012.* In addition to the powers and authority granted to the
6 board pursuant to Section ~~100006~~ *100010*, the board shall have
7 the power and authority to do the following:

8 (a) Cause the retirement savings program or arrangements
9 established under the program to be designed, established, and
10 operated, in a manner consistent with all of the following:

11 (1) In accordance with best practices for retirement savings
12 vehicles.

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

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

17 (b) Arrange for collective, common, and pooled investment of
18 assets of the retirement savings program or arrangements, including
19 investments in conjunction with other funds with which those
20 assets are permitted to be collectively invested, with a view to
21 saving costs through efficiencies and economies of scale.

22 (c) Explore and establish investment options that offer
23 employees guaranteed returns on contributions and the conversion
24 of *individual* retirement savings account balances to secure
25 retirement income without incurring debt or liabilities to the state.

26 (d) Disseminate educational information concerning saving and
27 planning for retirement.

28 (e) Disseminate information concerning the tax credits available
29 to small business owners for establishing new retirement plans
30 and the federal Retirement Savings Contribution Credit (Saver's
31 Credit) available to lower and moderate-income households for
32 qualified savings contributions.

33 (f) Submit progress and status reports to participating employers
34 and eligible employees.

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

37 (h) Evaluate and establish the process by which an eligible
38 employee of an eligible employer is able to contribute a portion
39 of his or her salary or wages to the program for automatic deposit
40 of those contributions and the participating employer provides a

1 payroll deposit retirement savings arrangement to forward the
 2 employee contribution and related information to the program or
 3 its agents. This may include, but is not limited to, financial services
 4 companies and third-party administrators with the capability to
 5 receive and process employee information and contributions for
 6 payroll deposit retirement savings arrangements or other
 7 arrangements authorized by this title.

8 (i) Design and establish the process for the enrollment of
 9 program participants.

10 (j) Allow participating employers to use the program to
 11 contribute to ~~the account~~ *their employees' individual retirement*
 12 *accounts* on their employees' behalf or match their employees'
 13 contributions, *provided that the contributions would be permitted*
 14 *under the Internal Revenue Code and would not cause the program*
 15 *to be treated as an employee benefit plan under the Employee*
 16 *Retirement Income Security Act.*

17 (k) Evaluate and establish the process by which an individual
 18 or an employee of a nonparticipating employer may enroll and
 19 make contributions to the program.

20 ~~100009.~~

21 *100014.* (a) Prior to opening the California Secure Choice
 22 Retirement Savings Program for enrollment, the board shall design
 23 and disseminate to employers through the Employment
 24 Development Department (EDD) an employee information packet.
 25 The packet shall include background information on the program
 26 and appropriate disclosures for employees.

27 (b) The disclosure form shall include, but not be limited to, all
 28 of the following:

29 (1) The benefits and risks associated with making contributions
 30 to the program.

31 (2) The mechanics of how to make contributions to the program.

32 (3) How to opt out of the program.

33 (4) The process for withdrawal of retirement savings.

34 (5) How to obtain additional information on the program.

35 (c) In addition, the disclosure form shall clearly articulate the
 36 following:

37 (1) Employees seeking financial advice should contact financial
 38 advisors, that employers are not in a position to provide financial
 39 advice, and that employers are not liable for decisions employees
 40 make pursuant to ~~Section 100016~~ *100034.*

1 (2) *The program is not an employer-sponsored retirement plan.*

2 ~~(2)~~

3 (3) *The program fund is privately insured and is not guaranteed*
4 *by the State of California.*

5 (d) *The disclosure form shall include a signature line for the*
6 *employee to sign and date acknowledging that the employee has*
7 *read all of the disclosures and understands their content.*

8 (e) *The employee information packet shall be made available*
9 *to employers through EDD and supplied to employees at the time*
10 *of hiring. All new employees shall review the packet and*
11 *acknowledge having read it by signing the signature line*
12 *accompanied by the date of the signature.*

13 (f) *The employee information packet shall be supplied to*
14 *existing employees when the program is initially launched for that*
15 *participating employer pursuant to Section ~~100010~~ 100032 and*
16 *employees shall review and sign the disclosure form at that time.*

17 *100016. (a) Prior to opening the California Secure Choice*
18 *Retirement Savings Program for enrollment, if there is sufficient*
19 *interest by vendors to participate and provide the necessary*
20 *funding, the board shall establish both of the following:*

21 (1) *A Retirement Investments Clearinghouse on its Internet Web*
22 *site.*

23 (2) *A vendor registration process through which information*
24 *about employer-sponsored retirement plans, and payroll deduction*
25 *individual retirement accounts and annuities offered by private*
26 *sector providers is made available for consideration by eligible*
27 *employers.*

28 (b) *Vendors who would like to participate in the board's*
29 *Retirement Investments Clearinghouse and be listed on the board's*
30 *Internet Web site as a registered vendor shall provide all of the*
31 *following information:*

32 (1) *A statement of experience in California and in other states*
33 *in providing employer-sponsored retirement plans, and payroll*
34 *deduction individual retirement accounts and annuities.*

35 (2) *A description by the vendor of the types of retirement*
36 *investment products offered.*

37 (3) *A disclosure of all expenses paid directly or indirectly by*
38 *retirement plan participants, including, but not limited to, penalties*
39 *for early withdrawals, declining or fixed withdrawal charges,*
40 *surrender or deposit charges, management fees, and annual fees,*

1 supported by documentation as required for prospectus disclosure
2 by the National Association of Securities Dealers and the Securities
3 and Exchange Commission. Vendors shall be required to provide
4 information regarding the impact of product fees upon a
5 hypothetical investment, as described in Section 100022.

6 (4) The types of products, product features, services offered to
7 participants, and information about how to access product
8 prospectuses or other relevant product information.

9 (5) A discussion of the ability, experience, and commitment of
10 the vendor to provide retirement counseling and education services,
11 including, but not limited to, access to group meetings and
12 individual counseling by various means, including telephone and
13 telecommunications devices for the deaf (TDD), Internet, and
14 face-to-face consultations by registered representatives.

15 (6) A statement of the financial strength of the vendor by
16 identifying its ratings assigned by nationally recognized rating
17 services that evaluate the financial strength of similar companies.

18 (7) The location of offices and counselors, individual registered
19 representatives, brokers, financial planners, agents, or other
20 methods of distribution, of the vendor that would serve employers
21 and their employees in California.

22 (8) A description of the ability of the vendor to comply with all
23 applicable provisions of federal and state law governing retirement
24 plans, including minimum distribution requirements and
25 contribution limits.

26 (9) To the extent applicable, the demonstrated ability of the
27 vendor to offer an appropriate array of accumulation funding
28 options, including, but not limited to, investment options that offer
29 guaranteed returns on contributions and the conversion of
30 retirement savings account balances to secure retirement income,
31 a diversified mix of value, growth, growth and income, hybrid,
32 and index funds or accounts across large, medium, and small
33 capitalization asset classes, both domestic and international.

34 (10) A discussion of the range of administrative and customer
35 services provided, including asset allocation, accounting and
36 administration of benefits for individual participants,
37 recordkeeping for individual participants, asset purchase, control,
38 and safekeeping, execution of a participant's instructions as to
39 asset and contribution allocation, calculation of daily net asset
40 values, direct access for participants to their account information,

1 *periodic reporting that is not less than quarterly to active*
2 *participants on their account balances and transactions, and*
3 *compliance with the standard of care consistent with federal law*
4 *and applicable to the provision of investment services.*

5 *(11) Certification by the vendor that the information provided*
6 *to the board accurately reflects the provisions of the retirement*
7 *investment products they register.*

8 *(c) Vendors shall supply information and data in the format*
9 *prescribed by the board.*

10 *100018. Registration shall be offered to vendors once annually,*
11 *and renewal of registration shall be required at least once every*
12 *five years thereafter for vendors who wish to continue to participate*
13 *in the Retirement Investments Clearinghouse. The board shall*
14 *provide public notice prior to the initial registration, annual*
15 *registration, and registration renewal periods.*

16 *100020. (a) The board may remove a vendor from the registry*
17 *if the vendor submits materially inaccurate information to the*
18 *board, does not remit assessed fees within 60 days, or fails to*
19 *submit notice of material changes to its registered investment*
20 *products. Vendors found to have submitted materially inaccurate*
21 *information to the board shall be allowed 60 days to correct the*
22 *information.*

23 *(b) The board shall remove a vendor from the registry if the*
24 *vendor is not licensed or has had its license revoked by the*
25 *National Association of Securities Dealers or the California*
26 *Department of Insurance for engaging in conduct prohibited by*
27 *those entities.*

28 *(c) The board shall establish an appeals process for vendors*
29 *who are denied registration or removed from the registry.*

30 *100022. (a) The board shall maintain the Retirement*
31 *Investments Clearinghouse containing the information required*
32 *in Section 100016 about the retirement investment products offered*
33 *by each registered vendor and objective comparisons of vendors*
34 *and types of products.*

35 *(b) The clearinghouse shall include information on investment*
36 *performance based upon the investment's average annual total*
37 *return as measured by a nationally recognized rating service*
38 *selected by the board for standard periods of time of not less than*
39 *one year.*

1 (c) *The board's Internet Web site shall include a table showing,*
2 *for each registered fund, the total fee cost in dollars incurred by*
3 *a shareholder who initially invested five thousand dollars (\$5,000),*
4 *earned a 5 percent rate of return for one-, five-, 10-, 15-, and*
5 *20-year time periods. This table shall be accompanied by a*
6 *disclaimer that the rate of return is for purposes of illustrating the*
7 *respective impacts of different fee amounts on each investment,*
8 *and is not to predict future investment returns.*

9 100024. *The board shall include a notice of the existence of,*
10 *and the Internet Web site address for, the Retirement Investments*
11 *Clearinghouse in a notice disseminated to eligible employers*
12 *through the Employment Development Department.*

13 100026. *A vendor may not charge a fee associated with a*
14 *registered product that is not disclosed.*

15 100028. (a) *The actual cost of establishing the vendor*
16 *registration system and the Retirement Investments Clearinghouse*
17 *shall be borne equally by registered vendors, based on the total*
18 *number of registered vendors. Each registered vendor shall pay*
19 *a one-time establishment fee equal to a pro rata share of the*
20 *establishment costs charged to vendors that register with the board*
21 *prior to the close of the initial registration period, as determined*
22 *by the board. The one-time establishment fee charged to vendors*
23 *that register with the board after the completion of the initial*
24 *registration period shall be distributed equally among registered*
25 *vendors that have paid the establishment fee and credited toward*
26 *subsequent maintenance and administrative fees charged to each*
27 *vendor.*

28 (b) *The actual cost of maintaining the vendor registration system*
29 *and the Retirement Investments Clearinghouse, and the costs*
30 *associated with publicizing the availability of the clearinghouse*
31 *to eligible employers, shall be borne equally by registered vendors,*
32 *based on the total number of registered vendors. Each registered*
33 *vendor shall pay a renewal fee equal to a pro rata share of the*
34 *maintenance costs, as determined by the board.*

35 (c) *Each registered vendor shall pay an administrative fee for*
36 *each retirement investment product it offers to employers, which*
37 *shall represent the actual costs associated with processing the*
38 *information related to the investment option and presenting it on*
39 *the Retirement Investments Clearinghouse, as determined by the*
40 *board.*

1 *(d) The board shall not divert California Secure Choice*
2 *Retirement Savings Trust funds to establish or maintain the vendor*
3 *registration system or the Retirement Investments Clearinghouse.*

4 *100030. (a) The board and the program, and its officers and*
5 *employees, are not responsible for, and shall not be held liable*
6 *for, the adequacy of the information provided by the participating*
7 *vendors contained in the clearinghouse. The clearinghouse*
8 *maintained by the board serves only to provide information*
9 *supplied by the participating vendors for the consideration of the*
10 *selection of retirement investment products.*

11 *(b) Participating vendors shall not utilize the program's logo,*
12 *or claim or infer endorsement or recommendation by the board*
13 *or the program with respect to products and services identified by*
14 *the vendors in the clearinghouse. At the discretion of the board,*
15 *a violation of this section may lead to removal from the registry.*

16 *(c) The board and the program shall not be held liable for the*
17 *actions of registered vendors.*

18 ~~100010.~~

19 *100032. (a) After the board opens the California Secure Choice*
20 *Retirement Savings Program for enrollment, any employer may*
21 *choose to have a payroll deposit retirement savings arrangement*
22 *to allow employee participation in the program.*

23 *(b) Beginning three months after the board opens the program*
24 *for enrollment, eligible employers with more than 100 eligible*
25 *employees and that do not offer an employer-sponsored retirement*
26 *plan or automatic enrollment payroll deduction IRA shall have a*
27 *payroll deposit retirement savings arrangement to allow employee*
28 *participation in the program.*

29 *(c) Beginning six months after the board opens the program for*
30 *enrollment, eligible employers with more than 50 eligible*
31 *employees and that do not offer an employer-sponsored retirement*
32 *plan or automatic enrollment payroll deduction IRA shall have a*
33 *payroll deposit retirement savings arrangement to allow employee*
34 *participation in the program.*

35 *(d) Beginning nine months after the board opens the program*
36 *for enrollment, all other eligible employers that do not offer an*
37 *employer-sponsored retirement plan or automatic enrollment*
38 *payroll deduction IRA shall have a payroll deposit retirement*
39 *savings arrangement to allow employee participation in the*
40 *program.*

1 (e) (1) Each eligible employee shall be enrolled in the program
2 unless the employee elects not to participate in the program. An
3 eligible employee may elect to opt out of the program by making
4 a notation on the exemption certificate produced by the
5 Employment Development Department.

6 (2) Following initial implementation of the program pursuant
7 to this section, at least once every two years, participating
8 employers shall designate an open enrollment period during which
9 eligible employees that previously opted out of the program shall
10 be enrolled in the program unless the employee again elects to opt
11 out as provided in this subdivision.

12 (3) An employee who elects to opt out of the program who
13 subsequently wants to participate through the employer's payroll
14 deposit retirement savings arrangement may only enroll during
15 the employer's designated open enrollment period or if permitted
16 by the employer at an earlier time.

17 (f) Employers shall retain the option at all times to set up any
18 type of employer-sponsored retirement plan, such as a defined
19 benefit plan or a 401(k), *Simplified Employee Pension (SEP) plan*,
20 *or Savings Incentive Match Plan for Employees (SIMPLE) plan*,
21 *or to offer an automatic enrollment payroll deduction IRA*, instead
22 of having a payroll deposit retirement savings arrangement to allow
23 employee participation in the California Secure Choice Retirement
24 Savings Program.

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

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

32 (i) By regulation, the board may adjust the contribution amount
33 set in subdivision (h) to no less than 2 percent and no more than
34 4 percent and may vary that amount within that 2 percent to 4
35 percent range for participating employees according to the length
36 of time the employee has contributed to the program.

37 ~~100016.~~

38 *100034.* (a) Employers shall not have any liability for an
39 employee's decision to participate in, or opt out of, the California

1 Secure Choice Retirement Savings Program, or for the investment
2 decisions of employees whose assets are deposited in the program.

3 (b) Employers shall not be a fiduciary, or considered to be a
4 fiduciary, over the California Secure Choice Retirement Savings
5 Trust or the program. An employer shall not bear responsibility
6 for the administration, investment, or investment performance of
7 the program. An employer shall not be liable with regard to
8 investment returns, program design, and benefits paid to program
9 participants.

10 (c) An employer's voluntary contribution to the program on
11 behalf of an employee *under subdivision (j) of Section 100012*
12 shall not in any way contradict the provisions of this section or
13 change the employer's relationship to the program or an employer's
14 obligations to employees.

15 ~~100017.~~

16 *100036.* The state shall not have any liability for the payment
17 of the retirement savings benefit that is guaranteed to program
18 participants pursuant to this title. Any financial liability for the
19 payment of benefits in excess of funds available under the program
20 shall be borne by the underwriters pursuant to the contract entered
21 into with the board on behalf of the program participants. The
22 state, and any of the funds of the state, shall have no obligation
23 for payment of the guaranteed benefits arising from this title.

24 ~~100018.~~

25 *100038.* (a) Notwithstanding Section 10231.5, the board shall
26 submit an annual audited financial report, prepared in accordance
27 with generally accepted accounting principles, on the operations
28 of the California Secure Choice Retirement Savings Trust by
29 August 1 to the Governor, the Controller, the State Auditor, and
30 the Legislature, pursuant to Section 9795. The annual audit shall
31 be made by an independent certified public accountant and shall
32 include, but not be limited to, direct and indirect costs attributable
33 to the use of outside consultants, independent contractors, and any
34 other persons who are not state employees.

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

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

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

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

4 ~~100022.~~

5 *100040.* The board shall initially conduct a market analysis to
6 determine whether the necessary conditions for implementation
7 of this title can be met, including, but not limited to, likely
8 participation rates, participants' comfort with various investment
9 vehicles and degree of risk, contribution levels, and the rate of
10 account closures and rollovers. The board shall conduct this
11 analysis only if sufficient funds are made available through a
12 nonprofit or private entity, or from federal funding. The board
13 shall forward *and offer to present* its findings to the Chair of the
14 Senate Committee on Labor and Industrial Relations, *the Chair of*
15 *the Assembly Committee on Labor and Employment*, the Chair of
16 the Senate Committee on Public Employment and Retirement, and
17 the Chair of the Assembly Committee on Public Employees,
18 Retirement and Social Security.

19 ~~100024.~~

20 *100042.* With the exceptions of subdivision (a) of Section
21 100002, and Sections ~~100022~~ *100040* and ~~100026~~ *100044*, the
22 provisions of this title shall become operative only if funds are
23 made available through a nonprofit or private entity, federal
24 funding, or an annual Budget Act appropriation in amounts
25 sufficient to allow the board to study, develop, and obtain the
26 approvals necessary to implement this title and the board notifies
27 the Director of Finance that, based on its market analysis, the
28 provisions of this title can be self-sustaining pursuant to this title.

29 ~~100026.~~

30 *100044.* This title shall be construed liberally in order to
31 effectuate its legislative intent. The purposes of this title and all
32 of its provisions with respect to the powers granted shall be broadly
33 interpreted to effectuate that intent and purposes and not as to any
34 limitation of powers.

35 SEC. 4. Section 1088.9 is added to the Unemployment
36 Insurance Code, to read:

37 1088.9. (a) The department shall have the power and duties
38 necessary to administer the enforcement of employer compliance
39 with Title 21 (commencing with Section 100000) of the
40 Government Code.

1 (b) An eligible employer shall use the department's exemption
2 certificate to create an option for an eligible employee to note his
3 or her decision to opt out of utilizing the California Secure Choice
4 Retirement Savings Program. The department shall make the
5 opt-out notation simple and concise and in a manner it deems
6 necessary to appropriately evidence the employee's understanding
7 that he or she is choosing not to automatically deduct earnings to
8 save for retirement.

9 (c) Each eligible employer who, without good cause, fails to
10 allow its eligible employees to participate in the California Secure
11 Choice Retirement Savings Program pursuant to Sections ~~100009~~
12 ~~100014~~ and ~~100010~~ 100032 of the Government Code, on or before
13 90 days after service of notice by the director pursuant to Section
14 1206 of his or her failure to comply, shall pay a penalty of two
15 hundred fifty dollars (\$250) per eligible employee if noncompliance
16 extends 90 days or more after the notice, and if found to be in
17 ~~willful~~ noncompliance 180 days or more after the notice, an
18 additional penalty of five hundred dollars (\$500) per eligible
19 employee.

20 (d) The department shall enforce this penalty as part of its
21 existing investigation and audit function.

22 (e) The provisions of this article, the provisions of Article 9
23 (commencing with Section 1176), with respect to refunds and
24 overpayments, and the provisions of Article 11 (commencing with
25 Section 1221), with respect to administrative appellate review shall
26 apply to the penalty imposed by this section. Penalties collected
27 pursuant to this section shall be deposited in the contingent fund.

28 (f) This section shall become operative six months after the
29 board notifies the Director of the Employment Development
30 Department that the full implementation of Title 21 (commencing
31 with Section 100000) of the Government Code will proceed. Upon
32 receipt of the notification from the board, the department shall
33 immediately post on its Internet Web site a notice stating that this
34 section is operative, and the date that it is first operative.

35 (g) If the department participates in the implementation and
36 administration of the program, it may charge the board a reasonable
37 fee for costs it incurs for implementing and administering the
38 program.

O