

Senate Bill No. 1234

CHAPTER 734

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.

[Approved by Governor September 28, 2012. Filed with
Secretary of State September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, 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 authorize 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 the opt-out form disseminated by the Employment Development Department to be used to create an option for employees to elect to opt out of the program, as specified. 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, upon sufficient funds being made available through a nonprofit or private entity or federal funding, would require the board to conduct a market analysis to determine whether the necessary conditions for implementation can be met, as specified. The bill would require moneys made available to conduct the market analysis to be deposited in the Secure Choice Retirement Savings Program Fund which would be created in the State Treasury. The bill would provide that the operational provisions of the California Secure Choice Retirement Savings Trust Act shall be operative only if the board determines that, based on the market analysis, the provisions will be self-sustaining, and 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 implement the program until the trust has sufficient funds to be self-sustaining.

The bill would require the board to ensure that an insurance, annuity, or other funding mechanism is in place at all times that protects the value of individuals' accounts and protects, indemnifies, and holds the state harmless at all times against any and all liability in connection with funding retirement benefits pursuant to these provisions.

The bill would prohibit the board from implementing the program if the IRA arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act of 1974.

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.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares the following:

(a) California workers without access to an employer-sponsored retirement plan need a seamless, lifelong savings system, providing them with the opportunity to build their assets and helping them to attain their

future financial stability through a program that offers secure and portable retirement savings.

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

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

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

(e) Providing California workers with a reliable retirement income to supplement social security is optimal to ensure that workers accumulate the savings they need for a secure retirement. Ideally, all private sector workers would have access to employer-sponsored retirement plans, but over 6.3 million California workers, 75 percent of whom earn less than \$50,000 per year, do not have access to retirement savings opportunities through their jobs. When workers are offered the opportunity to save through their place of employment, they are significantly more likely to participate and make steady and systematic contributions to build their retirement savings. Establishing and offering a retirement savings program for workers without access to an employer-sponsored retirement plan or payroll deduction IRA would provide a vital supplement to social security income and would be an important step toward improving the retirement security of all working Californians.

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

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

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

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

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

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

TITLE 21. THE CALIFORNIA SECURE CHOICE RETIREMENT
SAVINGS TRUST ACT

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

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

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

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

(2) “Eligible employee” does not include:

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

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

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

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

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

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

(h) “Stated interest rate” means the rate of interest allocated to program accounts as determined by the board pursuant to subdivision (c) of Section 100008.

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

(j) “Vendor” means a registered investment company or admitted life insurance company qualified to do business in California that provides retirement investment products. “Vendor” also includes a company that is registered to do business in California that provides payroll services or recordkeeping services and offers retirement plans or payroll deposit IRA arrangements using products of regulated investment companies and insurance companies qualified to do business in California. “Vendor” does not include individual registered representatives, brokers, financial planners, or agents.

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

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

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

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

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

(1) Directly or indirectly have any interest in the making of any investment made for the program, or in the gains or profits accruing from any investment made for the program.

(2) Borrow any funds or deposits of the trust, or use those funds or deposits in any manner, for himself or herself or as an agent or partner of others.

(3) Become an endorser, surety, or obligor on investments by the board.

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

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

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

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

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

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

(B) The investment policy shall mitigate risk by maintaining a balanced investment portfolio that provides assurance that no single investment or

class of investments will have a disproportionate impact on the total portfolio.

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

(A) Domestic equities and international equities.

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

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

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

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

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

(G) Insurance agreements.

(H) FDIC-insured bank products.

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

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

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

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

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

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

(f) The board shall approve an investment management entity or entities, the costs of which shall be paid out of funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust. 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. After sufficient funds are made available for this title to be operative pursuant to Section 100042, the California Secure Choice Retirement Savings Trust, as a self-sustaining trust, shall pay all costs of administration only out of 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. Operating costs associated with administering the trust do not include the procurement of private underwriting for the retirement savings' return.

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

100006. (a) The board may establish a segregated account within the program fund to be known as the Gain and Loss Reserve Account. The board shall have sole authority over the Gain and Loss Reserve Account,

if established. The Gain and Loss Reserve Account may be used to allocate interest at the stated interest rate for 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 program with respect to assets attributable to the 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 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 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 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 program's administrative costs.
- (4) The amount required for making allocations to 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).

100008. (a) The California Secure Choice Retirement Savings Program shall include, as determined by the board, one or more payroll deposit IRA arrangements.

(b) (1) Prior to July 1 of the initial program year, and prior to the beginning of each program year thereafter, the board shall adopt a program amendment in coordination with the investment management entity or entities with respect to the program to declare the stated rate at which interest shall be allocated to program accounts for the following program year.

(2) Interest shall be allocated to program accounts and shall be computed at the stated interest rate on the balance of an individual's account and shall be compounded daily.

(c) An individual's retirement savings benefit under the program shall be an amount equal to the balance in the individual's program account on the date the retirement savings benefit becomes payable.

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

- (1) Make and enter into contracts necessary for the administration of the trust.
- (2) Adopt a seal and change and amend it from time to time.
- (3) Cause moneys in the program fund to be held and invested and reinvested.
- (4) Accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of federal, state, or local government or any other

person, firm, partnership, or corporation for deposit to the administrative fund or the program fund.

(5) Appoint a program administrator, the costs of which shall be paid out of funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust, and determine the duties of the program administrator and other staff as necessary and set their compensation.

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

(7) Employ staff.

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

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

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

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

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

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

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

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

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

100012. In addition to the powers and authority granted to the board pursuant to Section 100010, the board shall have the power and authority to do the following:

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

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

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

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

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

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

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

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

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

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

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

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

(j) Allow participating employers to use the program to remit employees' contributions to their individual retirement accounts on their employees' behalf.

(k) Allow participating employers to make their own contributions to their employees' individual retirement accounts, provided that the

contributions would be permitted under the Internal Revenue Code and would not cause the program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act.

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

100013. The board shall ensure that an insurance, annuity, or other funding mechanism is in place at all times that protects the value of individuals' accounts. The funding mechanism shall protect, indemnify, and hold the state harmless at all times against any and all liability in connection with funding retirement benefits pursuant to this title. The costs of the funding mechanism shall be paid out of the funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust.

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

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

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

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

(3) How to opt out of the program.

(4) The process for withdrawal of retirement savings.

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

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

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

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

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

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

(e) The employee information packet shall also include an opt-out form for an eligible employee to note his or her decision to opt out of participation in the program. The opt-out notation shall be simple and concise and drafted in a manner that the board deems necessary to appropriately evidence the employee's understanding that he or she is choosing not to automatically deduct earnings to save for retirement.

(f) The employee information packet shall be made available to employers through EDD and supplied to employees at the time of hiring. All new

employees shall review the packet and acknowledge having read it by signing the signature line accompanied by the date of the signature.

(g) The employee information packet shall be supplied to existing employees when the program is initially launched for that participating employer pursuant to Section 100032 and employees shall review and sign the disclosure form at that time.

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

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

(2) A vendor registration process through which information about employer-sponsored retirement plans, and payroll deduction IRAs offered by private sector providers is made available for consideration by eligible employers.

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

(1) A statement of experience in California and in other states in providing employer-sponsored retirement plans, and payroll deduction IRAs.

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

(3) A disclosure of all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees, supported by documentation as required for prospectus disclosure by the National Association of Securities Dealers and the Securities and Exchange Commission. Vendors shall be required to provide information regarding the impact of product fees upon a hypothetical investment, as described in Section 100022.

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

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

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

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

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

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

(10) A discussion of the range of administrative and customer services provided, including asset allocation, accounting and administration of benefits for individual participants, recordkeeping for individual participants, asset purchase, control, and safekeeping, execution of a participant's instructions as to asset and contribution allocation, calculation of daily net asset values, direct access for participants to their account information, periodic reporting that is not less than quarterly to active participants on their account balances and transactions, and compliance with the standard of care consistent with federal law and applicable to the provision of investment services.

(11) Certification by the vendor that the information provided to the board accurately reflects the provisions of the retirement investment products it registers.

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

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

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

(b) The board shall remove a vendor from the registry if investments offered by the vendor are products of a regulated investment company or insurance company that is not licensed or has had its license revoked by the Financial Industry Regulatory Authority or the Department of Insurance for engaging in conduct prohibited by those entities.

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

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

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

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

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

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

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

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

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

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

100030. (a) The board and the program, and its officers and employees, are not responsible for, and shall not be held liable for, the adequacy of the information provided by the participating vendors and contained in the clearinghouse. The clearinghouse maintained by the board serves only to

provide information supplied by the participating vendors for the consideration of the selection of retirement investment products.

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

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

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

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

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

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

(e) (1) Each eligible employee shall be enrolled in the program unless the employee elects not to participate in the program. An eligible employee may elect to opt out of the program by making a notation on the opt-out form.

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

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

(f) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit

retirement savings arrangement to allow employee participation in the California Secure Choice Retirement Savings Program.

(g) An eligible employee may also terminate his or her participation in the program at any time in a manner prescribed by the board and thereafter by making a notation on the opt-out form.

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

100034. (a) Employers shall not have any liability for an employee's decision to participate in, or opt out of, the California Secure Choice Retirement Savings Program, or for the investment decisions of employees whose assets are deposited in the program.

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

(c) An employer's voluntary contribution under subdivision (j) of Section 100012 shall not in any way contradict the provisions of this section or change the employer's relationship to the program or an employer's obligations to employees.

100036. The state shall not have any liability for the payment of the retirement savings benefit earned by 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 entities with whom the board contracts to provide an insurance, annuity, or other funding mechanism to protect the value of individuals' accounts pursuant to Section 100013. The state, and any of the funds of the state, shall have no obligation for payment of the benefits arising from this title.

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

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

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

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

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

100040. The board shall initially conduct a market analysis to determine whether the necessary conditions for implementation of this title can be met, including, but not limited to, likely participation rates, participants' comfort with various investment vehicles and degree of risk, contribution levels, and the rate of account closures and rollovers. The board shall conduct this analysis only if sufficient funds to initiate and complete the required market analysis are made available through a nonprofit or private entity, or from federal funding. The Secure Choice Retirement Savings Program Fund is hereby created in the State Treasury. Moneys made available to conduct the market analysis shall be deposited in this fund. The board shall forward and offer to present its findings to the Chair of the Senate Committee on Labor and Industrial Relations, the Chair of the Assembly Committee on Labor and Employment, the Chair of the Senate Committee on Public Employment and Retirement, and the Chair of the Assembly Committee on Public Employees, Retirement and Social Security.

100042. With the exceptions of subdivision (a) of Section 100002, and Sections 100040, 100043, and 100044, the provisions of this title shall become operative only if the board determines that, based on the market analysis, the provisions of this title will be self-sustaining, and funds are made available through a nonprofit or other private entity, federal funding, or an annual Budget Act appropriation in amounts sufficient to allow the board to implement this title until the trust has sufficient funds to be self-sustaining.

100043. The board shall not implement the program if the IRA arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act.

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

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

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

(b) An eligible employer shall use the opt-out form in the employee information packet disseminated by the department to create an option for an eligible employee to note his or her decision to opt out of utilizing the California Secure Choice Retirement Savings Program.

(c) Each eligible employer that, without good cause, fails to allow its eligible employees to participate in the California Secure Choice Retirement Savings Program pursuant to Sections 100014 and 100032 of the Government Code, on or before 90 days after service of notice by the director pursuant to Section 1206 of its failure to comply, shall pay a penalty of two hundred fifty dollars (\$250) per eligible employee if noncompliance extends 90 days or more after the notice, and if found to be in noncompliance 180 days or more after the notice, an additional penalty of five hundred dollars (\$500) per eligible employee.

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

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

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

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