

AMENDED IN ASSEMBLY JUNE 15, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 5, 2016

SENATE BILL

No. 1234

**Introduced by Senator De León
(Coauthor: Senator Beall)**

February 18, 2016

An act to amend Sections *100000*, *100002*, *100004*, *100008*, *100010*, *100012*, *100014*, *100032*, ~~and *100036*~~ *100034*, *100036*, and *100043*, of, to add Sections *100046*, *100048*, *100049*, and *100050* to, and to repeal Sections *100013*, *100040*, *100042*, and *100043.5* of, the Government Code, and to amend Section *12302.2* of the *Welfare and Institutions 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. Existing law, the California Secure Choice Retirement Savings Trust Act, establishes the California Secure Choice *Retirement Savings Program*, administered by the California Secure Choice Retirement Savings Investment Board, contingent on specified funding and interest criteria being met. Existing law prescribes the composition of the board and its duties and provides that it acts as trustee in entering contracts and accepting moneys, among other things. Existing law prohibits the board from permitting enrollment in the program until enactment of a statute expressing legislative

approval of program implementation. The program requires specified eligible employers, as defined, to offer a payroll deposit retirement savings arrangement and requires eligible employees, as defined, who do not opt out of the program, to contribute a portion of their salary or wages to a retirement savings account in the program, as specified. Existing law requires contributions from the wages of employees participating in the program to be deposited in the California Secure Choice Retirement Savings Trust, which is continuously appropriated and administered by the board. Existing law authorizes the board to adjust the employee contribution amount between 2% and 4%, inclusive, of the employee's annual salary or wages, as specified.

This bill would express legislative approval of the program and its implementation on January 1, 2017. *The bill would require the board, prior to opening the program for enrollment, to make a report to the Governor and Legislature affirming that certain requirements have been met, including that the program is structured to meet a United States Department of Labor regulation, as specified.* The bill would require the board to design and implement the program and would prescribe certain parameters that the board is to consider and utilize in establishing the design. The bill would specify that funding and first year administrative costs may be appropriated in the annual budget from the General Fund and would require the board to repay the amount appropriated, plus interest, as specified. The bill would provide that investment policy decisions, including asset allocation and investment options, are entrusted to the board as a fiduciary, and would revise certain principles that the board is to consider in connection with investment policy. *The bill would exempt the California Secure Choice Retirement Savings Trust from specified provisions regarding the qualification of securities for sale.* The bill would make various changes to existing duties of the board, including those regarding dissemination of information and the entities with which the board is to collaborate and cooperate. The bill would require the Treasurer to appoint an executive director of the board, to serve at its pleasure, and to determine the duties of the office and its compensation. The bill would eliminate the duty of the board to ensure that insurance or some other mechanism is in place to protect the value of individual accounts. The bill would repeal the duty of the board to conduct an initial market analysis to determine if the condition for the implementation of the program can be met and associated provisions.

This bill would require eligible employers that do not offer specified retirement plans or accounts to have a payroll deposit retirement savings arrangement so that employees may participate in the program within specified time periods based on the number of eligible employees that the employer has, and the bill would authorize the board to extend these time periods. *The bill would define a provider of in-home supportive services as an employer if a specified determination is made and would require the state or a county that makes a direct payment to a provider to assume obligations regarding retirement savings accounts, including payroll deposit IRA arrangements offered under the program.* The bill would authorize the board to adjust the employee contribution amount described above up to 5% and would prescribe other limits on increasing employee contributions. The bill would authorize the board to make annual, automatic escalations of employee contributions subject to certain limitations, including that the employee may opt out, as specified. By authorizing the board to increase moneys that are deposited into the California Secure Choice Retirement Savings Trust, which is continuously appropriated, the bill would make an appropriation. The bill would authorize the board to adopt regulations to implement the program and would provide that the adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency. The bill would make various conforming changes.

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. Section 100000 of the Government Code is
- 2 amended to read:
- 3 100000. For purposes of this title, the following definitions
- 4 shall apply:
- 5 (a) “Board” means the California Secure Choice Retirement
- 6 Savings Investment Board.
- 7 (b) “California Secure Choice Retirement Savings Program” or
- 8 “program” means a retirement savings program offered by the
- 9 California Secure Choice Retirement Savings Trust.
- 10 (c) (1) “Eligible employee” means a person who is employed
- 11 by an eligible employer.
- 12 (2) “Eligible employee” does not include:

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

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

9 (d) (1) “Eligible employer” means a person or entity engaged
10 in a business, industry, profession, trade, or other enterprise in the
11 state, whether for profit or not for profit, excluding the federal
12 government, the state, any county, any municipal corporation, or
13 any of the state’s units or instrumentalities, that has five or more
14 employees and that satisfies the requirements to establish or
15 participate in a payroll deposit retirement savings arrangement.

16 (2) *Upon a positive determination pursuant to paragraph (5)*
17 *of subdivision (a) of Section 100046, eligible employer means an*
18 *employer of a provider of in-home supportive services, as regulated*
19 *by Article 7 (commencing with Section 12300) of Chapter 3 of*
20 *Part 3 of Division 9 of the Welfare and Institutions Code.*

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

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

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

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

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

35 (j) “Vendor” means a registered investment company or admitted
36 life insurance company qualified to do business in California that
37 provides retirement investment products. “Vendor” also includes
38 a company that is registered to do business in California that
39 provides payroll services or recordkeeping services and offers
40 retirement plans or payroll deposit IRA arrangements using

1 products of regulated investment companies and insurance
2 companies qualified to do business in California. “Vendor” does
3 not include individual registered representatives, brokers, financial
4 planners, or agents.

5 **SECTION 1.**

6 *SEC. 2.* Section 100002 of the Government Code is amended
7 to read:

8 100002. (a) (1) There is hereby created within state
9 government the California Secure Choice Retirement Savings
10 Investment Board, which shall consist of nine members, with the
11 Treasurer serving as chair, as follows:

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

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, including
39 contracted administrators and consultants, shall discharge their

1 duties as fiduciaries with respect to the trust solely in the interest
2 of the program participants as follows:

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

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

11 (e) (1) Investment policy decisions, including asset allocation
12 and investment options, shall be entrusted to the board subject to
13 its fiduciary duties. The board shall annually prepare and adopt a
14 written statement of investment policy that includes a risk
15 management and oversight program. The board shall consider the
16 statement of investment policy and any changes in the investment
17 policy at a public hearing.

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

20 (A) The primary objective of the investment policy is, through
21 pooled investing, to leverage economies of scale, lower risks, and
22 provide participants with a stable and reasonable rate of return.

23 (B) The investment policy shall mitigate risk by maintaining a
24 balanced investment portfolio that provides assurance that no single
25 investment or class of investments will have a disproportionate
26 impact on the total portfolio.

27 (3) The risk management and oversight program shall include
28 an effective risk management system to monitor the risk levels of
29 the California Secure Choice Retirement Savings Program
30 investment portfolio and ensure that the risks taken are prudent
31 and properly managed. The program shall be managed to provide
32 an integrated process for overall risk management on both a
33 consolidated and disaggregated basis, and to monitor investment
34 returns as well as risk to determine if the risks taken are adequately
35 compensated compared to applicable performance benchmarks
36 and standards.

37 (f) The board shall approve an investment management entity
38 or entities, the costs of which shall be paid out of funds held in the
39 trust and shall not be attributed to the administrative costs of the
40 board in operating the trust. Not later than 30 days after the close

1 of each month, the board shall place on file for public inspection
2 during business hours a report with respect to investments made
3 pursuant to this section and a report of deposits in financial
4 institutions. The investment manager shall report the following
5 information to the board within 20 days following the end of the
6 each month:

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

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

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

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

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

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

21 ~~SEC. 2.~~

22 *SEC. 3.* Section 100004 of the Government Code is amended
23 to read:

24 100004. (a) There is hereby established a retirement savings
25 trust known as the California Secure Choice Retirement Savings
26 Trust to be administered by the board for the purpose of promoting
27 greater retirement savings for California private employees in a
28 convenient, voluntary, low-cost, and portable manner. After
29 sufficient funds are made available for this title to be operative,
30 the California Secure Choice Retirement Savings Trust, as a
31 self-sustaining trust, shall pay all costs of administration only out
32 of moneys on deposit therein.

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

39 (c) Moneys in the program fund may be invested or reinvested
40 by the Treasurer or may be invested in whole or in part under

1 contract with the board of a California public retirement system
2 or private money managers, or both, as determined by the board.

3 (d) Transfers may be made from the program fund to the
4 administrative fund for the purpose of paying operating costs
5 associated with administering the trust and as required by this title.
6 On an annual basis, expenditures from the administrative fund
7 shall not exceed more than 1 percent of the total program fund.
8 All costs of administration of the trust shall be paid out of the
9 administrative fund. Operating costs associated with administering
10 the trust do not include the procurement of private underwriting
11 for the retirement savings' return.

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

17 (f) *The California Secure Choice Retirement Savings Trust is*
18 *an instrumentality of the state. Any security issued, managed, or*
19 *invested by the California Secure Choice Retirement Savings*
20 *Investment Board within the California Secure Choice Retirement*
21 *Savings Trust on behalf of an individual participating within the*
22 *California Secure Choice Retirement Savings Program shall be*
23 *exempt from Sections 25110, 25120, and 25130 of the Corporation*
24 *Code.*

25 ~~SEC. 3.~~

26 *SEC. 4.* Section 100008 of the Government Code is amended
27 to read:

28 100008. The California Secure Choice Retirement Savings
29 Program shall include, as determined by the board, one or more
30 payroll deposit IRA arrangements.

31 ~~SEC. 4.~~

32 *SEC. 5.* Section 100010 of the Government Code is amended
33 to read:

34 100010. (a) The board shall have the power and authority to
35 do all of the following:

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

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

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

- 1 (4) Accept any grants, gifts, legislative appropriation, and other
2 moneys from the state, any unit of federal, state, or local
3 government or any other person, firm, partnership, or corporation
4 for deposit to the administrative fund or the program fund.
- 5 (5) ~~Appoint~~ *Contract with* a program administrator and
6 determine the duties of the program administrator and other staff
7 as appropriate and set their compensation. *administrator.* The
8 Treasurer shall, on behalf of the board, appoint an executive
9 director, who shall not be a member of the board and who shall
10 serve at the pleasure of the board. The Treasurer shall determine
11 the duties of the executive director and other staff as appropriate
12 and set his or her compensation. The board may authorize the
13 executive director to enter into contracts on behalf of the board or
14 conduct any business necessary for the efficient operation of the
15 board.
- 16 (6) Make provisions for the payment of costs of administration
17 and operation of the trust. The costs of the program administrator
18 shall be paid out of funds held in the trust and shall not be attributed
19 to the administrative costs of the board in operating the trust.
- 20 (7) Employ staff.
- 21 (8) Retain and contract with the board of a California public
22 retirement system, private financial institutions, other financial
23 and service providers, consultants, actuaries, counsel, auditors,
24 third-party administrators, and other professionals as necessary.
- 25 (9) Procure insurance against any loss in connection with the
26 property, assets, or activities of the trust, and secure private
27 underwriting and reinsurance to manage risk and insure the
28 retirement savings rate of return.
- 29 (10) Procure insurance indemnifying each member of the board
30 from personal loss or liability resulting from a member's action
31 or inaction as a member of the board.
- 32 (11) Set minimum and maximum investment levels in
33 accordance with contribution limits set for IRAs by the Internal
34 Revenue Code.
- 35 (12) Collaborate and cooperate with the board of a California
36 public retirement system, private financial institutions, service
37 providers, and business, financial, trade, membership, and other
38 organizations to the extent necessary or desirable for the effective
39 and efficient design, implementation, and administration of the

1 program and to maximize outreach to eligible employers and
2 eligible employees.

3 (13) Collaborate with, and evaluate the role of, insurance and
4 financial advisors in assisting and providing guidance for eligible
5 employers and eligible employees.

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

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

19 (16) Carry out the duties and obligations of the California Secure
20 Choice Retirement Savings Trust pursuant to this title and exercise
21 any and all other powers as appropriate for the effectuation of the
22 purposes, objectives, and provisions of this title pertaining to the
23 trust.

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

29 ~~SEC. 5.~~

30 *SEC. 6.* Section 100012 of the Government Code is amended
31 to read:

32 100012. In addition to the powers and authority granted to the
33 board pursuant to Section 100010, the board shall have the power
34 and authority to do the following:

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

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

- 1 (2) To encourage participation, saving, and sound investment
2 practices, and appropriate selection of default investments.
- 3 (3) With simplicity, ease of administration for participating
4 employers, and portability of benefits.
- 5 (b) Arrange for collective, common, and pooled investment of
6 assets of the retirement savings program or arrangements, including
7 investments in conjunction with other funds with which those
8 assets are permitted to be collectively invested, with a view to
9 saving costs through efficiencies and economies of scale.
- 10 (c) Explore and establish investment options that offer
11 employees returns on contributions and the conversion of individual
12 retirement savings account balances to secure retirement income
13 without incurring debt or liabilities to the state.
- 14 (d) Disseminate educational information designed to educate
15 participants about the benefits of planning and saving for retirement
16 and information to help them decide the level of California Secure
17 Choice Retirement Savings Program participation and savings
18 strategies that may be appropriate for them.
- 19 (e) Disseminate information concerning the tax credits available
20 to small business owners for establishing new retirement plans
21 and the federal Retirement Savings Contribution Credit (Saver's
22 Credit) available to lower and moderate-income households for
23 qualified savings contributions.
- 24 (f) Submit progress and status reports to participating employers
25 and eligible employees.
- 26 (g) If necessary, determine the eligibility of an employer,
27 employee, or other individual to participate in the program.
- 28 (h) Evaluate and establish the process by which an eligible
29 employee of an eligible employer is able to contribute a portion
30 of his or her salary or wages to the program for automatic deposit
31 of those contributions and the participating employer provides a
32 payroll deposit retirement savings arrangement to forward the
33 employee contribution and related information to the program or
34 its agents. This may include, but is not limited to, financial services
35 companies and third-party administrators with the capability to
36 receive and process employee information and contributions for
37 payroll deposit retirement savings arrangements or other
38 arrangements authorized by this title.
- 39 (i) Design and establish the process for the enrollment of
40 program participants.

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

4 (k) Allow participating employers to make their own
5 contributions to their employees' individual retirement accounts,
6 provided that the contributions would be permitted under the
7 Internal Revenue Code and would not cause the program to be
8 treated as an employee benefit plan under the federal Employee
9 Retirement Income Security Act.

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

13 ~~SEC. 6.~~

14 *SEC. 7.* Section 100013 of the Government Code is repealed.

15 ~~SEC. 7.~~

16 *SEC. 8.* Section 100014 of the Government Code is amended
17 to read:

18 100014. (a) Prior to opening the California Secure Choice
19 Retirement Savings Program for enrollment, the board shall design
20 and disseminate to employers through the Employment
21 Development Department (EDD) an employee information packet.
22 The packet shall include background information on the program
23 and appropriate disclosures for employees.

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

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

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

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

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

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

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

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

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

39 (3) The program fund is not guaranteed by the State of
40 California.

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

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

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

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

20 ~~SEC. 8:~~

21 *SEC. 9.* Section 100032 of the Government Code is amended
22 to read:

23 100032. (a) After the board opens the California Secure Choice
24 Retirement Savings Program for enrollment, any employer may
25 choose to have a payroll deposit retirement savings arrangement
26 to allow employee participation in the program under the terms
27 and conditions prescribed by the board.

28 (b) Within 12 months after the board opens the program for
29 enrollment, eligible employers with more than 100 eligible
30 employees and that do not offer an employer-sponsored retirement
31 plan or automatic enrollment payroll deduction IRA shall have a
32 payroll deposit retirement savings arrangement to allow employee
33 participation in the program.

34 (c) Within 24 months after the board opens the program for
35 enrollment, eligible employers with more than 50 eligible
36 employees and that do not offer an employer-sponsored retirement
37 plan or automatic enrollment payroll deduction IRA shall have a
38 payroll deposit retirement savings arrangement to allow employee
39 participation in the program.

1 (d) Within 36 months after the board opens the program for
2 enrollment, all other eligible employers that do not offer an
3 employer-sponsored retirement plan or automatic enrollment
4 payroll deduction IRA shall have a payroll deposit retirement
5 savings arrangement to allow employee participation in the
6 program.

7 (e) The board, in its discretion, may extend the time limits
8 defined in subdivisions (b) to (d), inclusive.

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

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

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

24 (g) Employers shall retain the option at all times to set up any
25 type of employer-sponsored retirement plan, such as a defined
26 benefit plan or a 401(k), Simplified Employee Pension (SEP) plan,
27 or Savings Incentive Match Plan for Employees (SIMPLE) plan,
28 or to offer an automatic enrollment payroll deduction IRA, instead
29 of having a payroll deposit retirement savings arrangement to allow
30 employee participation in the California Secure Choice Retirement
31 Savings Program.

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

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

39 (j) By regulation, the board may adjust the contribution amount
40 set in subdivision (i) to no less than 2 percent and no more than 5

1 percent and may vary that amount within that 2 percent to 5 percent
2 range for participating employees according to the length of time
3 the employee has contributed to the program.

4 (k) The board may implement annual automatic escalation of
5 employee contributions.

6 (1) Employee contributions subject to automatic escalation shall
7 not exceed 8 percent of salary.

8 (2) Automatic escalation shall result in no more than a
9 1-percent-of-salary increase in employee contributions per calendar
10 year.

11 (3) A participating employee may elect to opt out of automatic
12 escalation and may set his or her contribution percentage rate at a
13 level determined by the participating employee.

14 *SEC. 10. Section 100034 of the Government Code is amended*
15 *to read:*

16 100034. (a) Employers shall not have any liability for an
17 employee's decision to participate in, or opt out of, the California
18 Secure Choice Retirement Savings Program, or for the investment
19 decisions of employees whose assets are deposited in the program.

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

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

31 *(d) An employer shall not have civil liability, and no cause of*
32 *action shall arise against an employer, for acting pursuant to the*
33 *regulations prescribed by the board defining the roles and*
34 *responsibilities of employers that have a payroll deposit retirement*
35 *savings arrangement to allow employee participation in the*
36 *program.*

37 ~~SEC. 9.~~

38 *SEC. 11. Section 100036 of the Government Code is amended*
39 *to read:*

1 100036. The state shall not have any liability for the payment
2 of the retirement savings benefit earned by program participants
3 pursuant to this title. The state, and any of the funds of the state,
4 shall have no obligation for payment of the benefits arising from
5 this title.

6 ~~SEC. 10.~~

7 *SEC. 12.* Section 100040 of the Government Code is repealed.

8 ~~SEC. 11.~~

9 *SEC. 13.* Section 100042 of the Government Code is repealed.

10 *SEC. 14.* *Section 100043 of the Government Code is amended*
11 *to read:*

12 100043. (a) The board shall not implement the program if the
13 IRA arrangements offered fail to qualify for the favorable federal
14 income tax treatment ordinarily accorded to IRAs under the Internal
15 Revenue Code, or if it is determined that the program is an
16 employee benefit plan under the federal Employee Retirement
17 Income Security Act.

18 (b) (1) *Prior to opening the program for enrollment, the board*
19 *shall report to the Governor and Legislature the specific date on*
20 *which the program will start to enroll program participants and*
21 *that the following prerequisites and requirements for the program*
22 *have been met:*

23 (A) *The United States Department of Labor has finalized a*
24 *regulation setting forth a safe harbor for savings arrangements*
25 *established by states for nongovernmental employees for the*
26 *purposes of the federal Employee Retirement Income Security Act.*

27 (B) *The program is structured in a manner to meet the criteria*
28 *of the United States Department of Labor regulation.*

29 (C) *The payroll deduction IRA arrangements offered by the*
30 *program qualify for the favorable federal income tax treatment*
31 *ordinarily accorded to IRA arrangements under the Internal*
32 *Revenue Code.*

33 (D) *The board has defined in regulation the roles and*
34 *responsibilities of employers pursuant to the criteria outlined in*
35 *the United States Department of Labor regulation described in*
36 *paragraph (2) and any associated guidance.*

37 (E) *The board has adopted an operational model that limits*
38 *employer interaction and transactions with the employee to the*
39 *extent feasible.*

1 (2) *The report required by paragraph (1) shall be submitted in*
2 *compliance with Section 9795.*

3 ~~SEC. 12.~~

4 *SEC. 15.* Section 100043.5 of the Government Code is repealed.

5 ~~SEC. 13.~~

6 *SEC. 16.* Section 100046 is added to the Government Code,
7 to read:

8 100046. (a) Based upon findings and recommendations of the
9 board pursuant to Section 100040, the California Secure Choice
10 Retirement Savings Program is approved by the Legislature and
11 implemented as of January 1, 2017. The board, subject to its
12 authority and fiduciary duty, shall design and implement the
13 California Secure Choice Retirement Savings Program. The board
14 shall consider and utilize the following parameters in designing
15 the program:

16 (1) For up to three years, the board may establish managed
17 accounts invested in United States Treasuries or similarly safe
18 investments. During this time, the board may develop investment
19 options that address risk-sharing and smoothing of market losses
20 and gains. Options may include, but are not limited to, custom
21 pooled, professionally managed funds that minimize costs and
22 fees, the creation of a reserve fund, or the establishment of
23 investment products.

24 (2) The board shall seek to minimize participant fees.

25 (3) The board shall strive to implement program features that
26 provide maximum possible income replacement balanced with
27 appropriate risk in an IRA-based environment.

28 (4) The board shall determine the default payout method for
29 retirees.

30 (5) The board shall include ~~quasi-public and quasi-private~~
31 *employees a provider of in-home supportive services, as regulated*
32 *by Article 7 (commencing with Section 12300) of Chapter 3 of*
33 *Part 3 of Division 9 of the Welfare and Institutions Code* in the
34 program if the board determines the inclusion to be legally
35 permissible under federal and state laws and regulations.

36 (6) The board shall structure the program so as to ensure the
37 state is prohibited from incurring liabilities associated with
38 administering the program and that the state has no liability for
39 the program or its investments.

1 (7) The board shall determine necessary costs associated with
 2 outreach, customer service, enforcement, staffing and consultant
 3 costs, and all other costs necessary to administer the program.

4 (8) The board shall partner with employer representatives to
 5 create an administrative structure that ensures employee
 6 participation while addressing employer needs, including, but not
 7 limited to, clearly defining employers’ duties and liability
 8 exemption pursuant to Section 100034.

9 (9) The board shall include comprehensive worker education
 10 and ~~outreach~~, *outreach in the program*, and the board may
 11 collaborate with state and local government agencies,
 12 community-based and nonprofit organizations, foundations,
 13 vendors, and other entities deemed appropriate to develop and
 14 secure ongoing resources for education and outreach that reflect
 15 the cultures and languages of the state’s diverse workforce
 16 population.

17 (10) *The board shall include comprehensive employer education*
 18 *and outreach in the program, with an emphasis on employers with*
 19 *less than 100 employees, developed in consultation with employer*
 20 *representatives, with the integration of the following components:*

21 (A) *A program Web site to assist the employers of participating*
 22 *employees.*

23 (B) *A toll-free help line for employers with live and automated*
 24 *assistance.*

25 (C) *Online Web training.*

26 (D) *Live presentations to business associations.*

27 (E) *Targeted outreach to small businesses with 10 or less*
 28 *employees.*

29 (b) In order to ensure timely implementation of the California
 30 Secure Choice Retirement Savings Program, the board shall have
 31 flexibility in designing and implementing the California Secure
 32 Choice Retirement Savings Program. The program parameters set
 33 forth in this section shall not be conclusive. The board shall have
 34 the authority to augment these requirements as necessary to fully
 35 implement the program and comply with the board’s fiduciary
 36 duties.

37 ~~SEC. 14.~~

38 *SEC. 17.* Section 100048 is added to the Government Code,
 39 to read:

1 100048. The board may adopt regulations to implement this
2 title. The adoption, amendment, repeal, or readoption of a
3 regulation authorized by this section is deemed to address an
4 emergency, for purposes of Sections 11346.1 and 11349.6, and
5 the board is hereby exempted for this purpose from the
6 requirements of subdivision (b) of Section 11346.1.

7 ~~SEC. 15.~~

8 *SEC. 18.* Section 100049 is added to the Government Code,
9 to read:

10 100049. A payroll deposit IRA arrangement offered pursuant
11 to the California Secure Choice Retirement Savings Program shall
12 have the same status as, and be treated consistently with, any other
13 IRA qualified under Section 408(a) or 408(b) of the United States
14 Code for the purpose of determining eligibility or benefit level for
15 a program that uses a means test.

16 ~~SEC. 16.~~

17 *SEC. 19.* Section 100050 is added to the Government Code,
18 to read:

19 100050. Funding for startup and first-year administrative costs
20 may be appropriated from the General Fund in the annual Budget
21 Act. The board shall repay the amount appropriated, plus interest
22 calculated at the rate earned by the Pooled Money Investment
23 Account. Necessary administrative costs in future years shall be
24 paid out of the administrative fund.

25 *SEC. 20. Section 12302.2 of the Welfare and Institutions Code*
26 *is amended to read:*

27 12302.2. (a) (1) If the state or a county makes or provides for
28 direct payment to a provider chosen by a recipient or to the
29 recipient for the purchase of in-home supportive services, the
30 department shall perform or assure the performance of all rights,
31 duties and obligations of the recipient relating to those services as
32 required for purposes of unemployment compensation,
33 unemployment compensation disability benefits, workers'
34 compensation, *retirement savings accounts, including payroll*
35 *deposit IRA arrangements offered pursuant to the California Secure*
36 *Choice Retirement Savings Program (Title 21 (commencing with*
37 *Section 100000) of the Government Code), federal and state income*
38 *tax, and federal old-age survivors and disability insurance benefits.*
39 Those rights, duties, and obligations include, but are not limited
40 to, registration and obtaining employer account numbers, providing

1 information, notices, and reports, making applications and returns,
2 and withholding in trust from the payments made to or on behalf
3 of a recipient amounts to be withheld from the wages of the
4 provider by the recipient as an employer, including the sales tax
5 extended to support services by Article 4 (commencing with
6 Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue
7 and Taxation Code, and transmitting those amounts along with
8 amounts required for all contributions, premiums, and taxes payable
9 by the recipient as the employer to the appropriate person or state
10 or federal agency. The department may assure the performance of
11 any or all of these rights, duties, and obligations by contract with
12 any person, or any public or private agency.

13 (2) Contributions, premiums, and taxes shall be paid or
14 transmitted on the recipient's behalf as the employer for any period
15 commencing on or after January 1, 1978, except that contributions,
16 premiums, and taxes for federal and state income taxes and federal
17 old-age, survivors and disability insurance contributions shall be
18 paid or transmitted pursuant to this section commencing with the
19 first full month that begins 90 days after the effective date of this
20 section.

21 (3) Contributions, premiums, and taxes paid or transmitted on
22 the recipient's behalf for unemployment compensation, workers'
23 compensation, and the employer's share of federal old-age
24 survivors and disability insurance benefits shall be payable in
25 addition to the maximum monthly amount established pursuant to
26 Section 12303.5 or subdivision (a) of Section 12304 or other
27 amount payable to or on behalf of a recipient. Contributions,
28 premiums, or taxes resulting from liability incurred by the recipient
29 as employer for unemployment compensation, workers'
30 compensation, and federal old-age, survivors and disability
31 insurance benefits with respect to any period commencing on or
32 after January 1, 1978, and ending on or before the effective date
33 of this section shall also be payable in addition to the maximum
34 monthly amount established pursuant to Section 12303.5 or
35 subdivision (a) of Section 12304 or other amount payable to or on
36 behalf of the recipient. Nothing in this section shall be construed
37 to permit any interference with the recipient's right to select the
38 provider of services or to authorize a charge for administrative
39 costs against any amount payable to or on behalf of a recipient.

1 (b) If the state makes or provides for direct payment to a
2 provider chosen by a recipient, the Controller shall make any
3 deductions from the wages of in-home supportive services
4 personnel that are authorized by Sections 1152 and 1153 of the
5 Government Code, as limited by Section 3515.6 of the Government
6 Code, and for the sales tax extended to support services by Article
7 4 (commencing with Section 6150) of Chapter 2 of Part 1 of
8 Division 2 of the Revenue and Taxation Code.

9 (c) Funding for the costs of administering this section and for
10 contributions, premiums, and taxes paid or transmitted on the
11 recipient's behalf as an employer pursuant to this section shall
12 qualify, where possible, for the maximum federal reimbursement.
13 To the extent that federal funds are inadequate, notwithstanding
14 Section 12306, the state shall provide funding for the purposes of
15 this section.

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