

AMENDED IN ASSEMBLY AUGUST 15, 2016

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)

(Principal coauthor: Assembly Member Gatto)

(Coauthors: Senators Beall, Hall, Hertzberg, Leno, and Pan)

(Coauthors: Assembly Members Dodd, Cristina Garcia, Gonzalez, McCarty, and Williams)

February 18, 2016

An act to amend Sections 100000, 100002, 100004, 100008, 100010, 100012, 100014, 100032, 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 require the board, for up to 3 years following implementation, to establish managed accounts invested in United States Treasury securities, in myRAs, as defined, or in similar investments and would make conforming changes in this connection in provisions related to mitigating risk in the investment portfolio and payment of the costs of administration. The bill would require the board, after this period, to annually prepare and adopt a written statement of investment policy containing specified elements. The bill would require the board to consider the statement and any changes in the investment policy at a public hearing.* 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. *On and after 6 years from the date the program is implemented, the bill would prohibit expenditures for the purpose of paying operative costs and administering the trust from exceeding 1% of the total program fund. The bill would revise the purposes for which administrative and program funds may be expended.*

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~~

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~~: accounts and would eliminate the requirement to secure private underwriting and reinsurance, as specified. 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 provide that employers retain the right at all times to set up and offer their own qualified retirement plans.* The bill would define *an employer of 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:
 13 (A) Any employee covered under the federal Railway Labor
 14 Act (45 U.S.C. Sec. 151), or any employee engaged in interstate
 15 commerce so as not to be subject to the legislative powers of the
 16 state, except insofar as application of this title is authorized under
 17 the United States Constitution or laws of the United States.
 18 (B) Any employee ~~covered by a valid collective bargaining~~
 19 ~~agreement that expressly provides for a multiemployer~~ *on whose*
 20 *behalf an employer makes contributions to a Taft-Hartley pension*
 21 ~~plan~~ *trust fund.*
 22 (d) (1) “Eligible employer” means a person or entity engaged
 23 in a business, industry, profession, trade, or other enterprise in the
 24 state, whether for profit or not for profit, excluding the federal
 25 government, the state, any county, any municipal corporation, or
 26 any of the state’s units or instrumentalities, that has five or more
 27 employees and that satisfies the requirements to establish or
 28 participate in a payroll deposit retirement savings arrangement.
 29 (2) Upon a positive determination pursuant to paragraph (5) of
 30 subdivision (a) of Section 100046, eligible employer means an
 31 employer of a provider of in-home supportive services, as regulated

1 by Article 7 (commencing with Section 12300) of Chapter 3 of
2 Part 3 of Division 9 of the Welfare and Institutions Code.

3 (3) “Eligible employer” does not include an employer that
4 provides a retirement savings program as described in subdivision
5 (g) of Section 100032.

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

9 (f) “myRA” means the federal myRA retirement savings
10 program, including any successor program, offered by the United
11 States Department of the Treasury or an IRA offered under that
12 program.

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

17 ~~(g)~~
18 (h) “Payroll deposit retirement savings arrangement” means an
19 arrangement by which an employer allows employees to remit
20 payroll deduction contributions to a retirement savings program.
21 program, which may include an IRA, and in the case of a payroll
22 deduction IRA arrangement, to remit specifically to an IRA.

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

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

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

38 SEC. 2. Section 100002 of the Government Code is amended
39 to read:

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

- 5 (A) The Treasurer.
- 6 (B) The Director of Finance, or his or her designee.
- 7 (C) The Controller.
- 8 (D) An individual with retirement savings and investment
9 expertise appointed by the Senate Committee on Rules.
- 10 (E) An employee representative appointed by the Speaker of
11 the Assembly.
- 12 (F) A small business representative appointed by the Governor.
- 13 (G) A public member appointed by the Governor.
- 14 (H) Two additional members appointed by the Governor.

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

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

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

- 23 (1) Directly or indirectly have any interest in the making of any
24 investment made for the program, or in the gains or profits accruing
25 from any investment made for the program.
- 26 (2) Borrow any funds or deposits of the trust, or use those funds
27 or deposits in any manner, for himself or herself or as an agent or
28 partner of others.
- 29 (3) Become an endorser, surety, or obligor on investments by
30 the board.

31 (d) The board and the program administrator and staff, including
32 contracted administrators and consultants, shall discharge their
33 duties as fiduciaries with respect to the trust solely in the interest
34 of the program participants as follows:

- 35 (1) For the exclusive purposes of providing benefits to program
36 participants and defraying reasonable expenses of administering
37 the program.
- 38 (2) By investing with the care, skill, prudence, and diligence
39 under the circumstances then prevailing that a prudent person
40 acting in a like capacity and familiar with those matters would use

1 in the conduct of an enterprise of a like character and with like
2 aims.

3 ~~(e) (1) Investment policy decisions, including asset allocation~~
4 ~~and investment options, shall be entrusted to the board subject to~~
5 ~~its fiduciary duties. The board shall annually prepare and adopt a~~
6 ~~written statement of investment policy that includes a risk~~
7 ~~management and oversight program. The board shall consider the~~
8 ~~statement of investment policy and any changes in the investment~~
9 ~~policy at a public hearing.~~

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

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

15 ~~(B) The investment policy shall mitigate risk by maintaining a~~
16 ~~balanced investment portfolio that provides assurance that no single~~
17 ~~investment or class of investments will have a disproportionate~~
18 ~~impact on the total portfolio.~~

19 *(e) The board, subject to its authority and fiduciary duty, shall*
20 *design and implement the California Secure Choice Retirement*
21 *Savings Program.*

22 *(1) (A) For up to three years following the initial*
23 *implementation of the program, the board shall establish managed*
24 *accounts invested in United States Treasuries, myRAs, or similar*
25 *investments.*

26 *(B) The board shall have the authority to provide for investment*
27 *in myRAs, provided that, in accordance with the myRA provisions,*
28 *myRA contributions and investment returns shall only be used for*
29 *myRA investments and to make distributions to, or for the benefit*
30 *of, participants and shall not be used to pay any costs of*
31 *administration.*

32 *(2) (A) During period described in paragraph (1), the board*
33 *shall develop and implement an investment policy that defines the*
34 *program's investment objectives and shall establish policies and*
35 *procedures enabling investment objectives to be met in a prudent*
36 *manner. The board shall seek to minimize participant fees and*
37 *strive to implement program features that provide maximum*
38 *possible income replacement balanced with appropriate risk in*
39 *an IRA-based environment. The policy shall describe the investment*
40 *options available to holders of individual savings accounts*

1 established as part of the program. Investment options may
2 encompass a range of risk and return opportunities and allow for
3 a rate of return commensurate with an appropriate level of risk
4 to meet the investment objectives stated in the policy.

5 (B) The board may also develop investment option
6 recommendations that address risk-sharing and smoothing of
7 market losses and gains. Investment option recommendations may
8 include, but are not limited to, the creation of a reserve fund or
9 the establishment of customized investment products.
10 Implementation of an investment option recommendation pursuant
11 to this subparagraph shall be contingent upon subsequent approval
12 by the Legislature.

13 (3) After the period described in paragraph (1) has expired, the
14 board shall annually prepare and adopt a written statement of
15 investment policy that includes a risk management and oversight
16 program. The board shall consider the statement of investment
17 policy and any changes in the investment policy at a public hearing.

18 ~~(3)~~

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

29 (f) The board shall approve an investment management entity
30 or entities, the costs of which shall be paid out of funds held in the
31 trust and shall not be attributed to the administrative costs of the
32 board in operating the trust. Not later than 30 days after the close
33 of each month, the board shall place on file for public inspection
34 during business hours a report with respect to investments made
35 pursuant to this section and a report of deposits in financial
36 institutions. ~~The investment manager shall report the following~~
37 ~~information to the board within 20 days following the end of the~~
38 ~~each month:~~

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

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

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

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

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

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

15 SEC. 3. Section 100004 of the Government Code is amended
16 to read:

17 100004. (a) There is hereby established a retirement savings
18 trust known as the California Secure Choice Retirement Savings
19 Trust to be administered by the board for the purpose of promoting
20 greater retirement savings for California private employees in a
21 convenient, voluntary, low-cost, and portable manner. After
22 sufficient funds are made available for this title to be operative,
23 the California Secure Choice Retirement Savings Trust, as a
24 self-sustaining trust, shall pay all costs of administration only out
25 of moneys on deposit therein.

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

32 (c) Moneys in the program fund may be invested or reinvested
33 by the Treasurer or may be invested in whole or in part under
34 contract with the board of a California public retirement ~~system~~
35 ~~or system, with~~ private money managers, ~~or both, in myRAs, or a~~
36 ~~combination thereof,~~ as determined by the board.

37 (d) Transfers may be made from the program fund to the
38 administrative fund for the purpose of paying operating costs
39 associated with administering the trust and as required by this ~~title.~~
40 *title, including, but not limited to, board operations, program*

1 *administrator and investment expenses, and enforcement and*
2 *compliance costs. On and after six years from the date the program*
3 *is implemented, on an annual basis, expenditures from the*
4 *administrative fund shall not exceed more than 1 percent of the*
5 *total program fund. All costs of administration of the trust shall*
6 *be paid out of the administrative fund. ~~Operating costs associated~~*
7 *~~with administering the trust do not include the procurement of~~*
8 *~~private underwriting for the retirement savings' return.~~*

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

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

22 SEC. 4. Section 100008 of the Government Code is amended
23 to read:

24 100008. The California Secure Choice Retirement Savings
25 Program shall include, as determined by the board, one or more
26 payroll-deposit *deduction* IRA arrangements.

27 SEC. 5. Section 100010 of the Government Code is amended
28 to read:

29 100010. (a) The board shall have the power and authority to
30 do all of the following:

31 (1) Make and enter into contracts necessary for the
32 administration of the trust.

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

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

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

1 (5) Contract with a program administrator and determine the
2 duties of the program administrator. The Treasurer shall, on behalf
3 of the board, appoint an executive director, who shall not be a
4 member of the board and who shall serve at the pleasure of the
5 board. The Treasurer shall determine the duties of the executive
6 director and other staff as appropriate and set his or her
7 compensation. The board may authorize the executive director to
8 enter into contracts on behalf of the board or conduct any business
9 necessary for the efficient operation of the board.

10 (6) Make provisions for the payment of costs of administration
11 and operation of the trust. ~~The costs of the program administrator~~
12 ~~shall be paid out of funds held in the trust and shall not be attributed~~
13 ~~to the administrative costs of the board in operating the trust.~~

14 (7) Employ staff.

15 (8) Retain and contract with the board of a California public
16 retirement system, private financial institutions, other financial
17 and service providers, consultants, actuaries, counsel, auditors,
18 third-party administrators, and other professionals as necessary.

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

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

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

29 (12) Collaborate and cooperate with the board of a California
30 public retirement system, private financial institutions, service
31 providers, and business, financial, trade, membership, and other
32 organizations to the extent necessary or desirable for the effective
33 and efficient design, implementation, and administration of the
34 program and to maximize outreach to eligible employers and
35 eligible employees.

36 (13) Collaborate with, and evaluate the role of, *licensed*
37 *insurance agents* and financial advisors in assisting and providing
38 guidance for ~~eligible employers and~~ eligible employees.

39 (14) Cause expenses incurred to initiate, implement, maintain,
40 and administer the program to be paid from contributions to, or

1 investment returns or assets of, the program or arrangements
 2 established under the program, to the extent permitted under state
 3 and federal law.

4 (15) Facilitate compliance by the retirement savings program
 5 or arrangements established under the program with all applicable
 6 requirements for the program under the Internal Revenue Code of
 7 1986, including tax qualification requirements or any other
 8 applicable law and accounting requirements, including providing
 9 or arranging for assistance to program sponsors and individuals
 10 in complying with applicable law and tax qualification
 11 requirements in a cost-effective manner.

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

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

22 SEC. 6. Section 100012 of the Government Code is amended
 23 to read:

24 100012. In addition to the powers and authority granted to the
 25 board pursuant to Section 100010, the board shall have the power
 26 and authority to do the following:

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

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

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

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

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

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

5 (d) Disseminate educational information designed to educate
6 participants about the benefits of planning and saving for retirement
7 and information to help them decide the level of California Secure
8 Choice Retirement Savings Program participation and savings
9 strategies that may be appropriate for them.

10 (e) Disseminate information concerning the tax credits available
11 to small business owners for ~~establishing new retirement plans~~
12 *allowing their employees to participate in the program*, and the
13 federal Retirement Savings Contribution Credit (Saver's Credit)
14 available to lower and moderate-income households for qualified
15 savings contributions.

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

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

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

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

33 (j) Allow participating employers to use the program to remit
34 employees' contributions to their ~~individual retirement accounts~~
35 *IRAs* on their employees' behalf.

36 (k) Allow participating employers to make their own
37 contributions to their employees' ~~individual retirement accounts~~,
38 *IRAs*, provided that the contributions would be permitted under
39 the Internal Revenue Code and would not cause the program to be

1 treated as an employee benefit plan under the federal Employee
2 Retirement Income Security Act.

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

6 SEC. 7. Section 100013 of the Government Code is repealed.

7 SEC. 8. Section 100014 of the Government Code is amended
8 to read:

9 100014. (a) Prior to opening the California Secure Choice
10 Retirement Savings Program for enrollment, the board shall design
11 and disseminate to employers through the Employment
12 Development Department (EDD) an employee information ~~packet~~.
13 *packet that shall be available in an electronic format.* The packet
14 shall include background information on the program and
15 appropriate disclosures for employees.

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

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

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

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

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

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

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

26 (1) Employees seeking financial advice should contact financial
27 advisors, that employers ~~are not in a position to do not~~ provide
28 financial advice, *that employees are not to contact their employers*
29 *for financial advice*, and that employers are not liable for decisions
30 employees make pursuant to Section 100034.

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

32 (2) *This retirement program is not sponsored by the employer,*
33 *and therefore the employer is not responsible for the plan or liable*
34 *as a plan sponsor.*

35 (3) The program fund is not guaranteed by the State of
36 California.

37 (d) The disclosure form shall include a ~~signature line method~~
38 for the employee to ~~sign and date acknowledging~~ *acknowledge*
39 that the employee has read all of the disclosures and understands
40 their content.

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

8 (f) The employee information packet *with the disclosure and*
9 *opt-out forms* shall be made available to employers through EDD
10 and supplied to employees at the time of hiring. All new employees
11 shall review the packet and acknowledge having read it by signing
12 ~~the signature line accompanied by the date of the signature.~~
13 *received it.*

14 (g) The employee information packet *with the disclosure and*
15 *opt-out forms* shall be supplied to existing employees when the
16 program is initially launched for that participating employer
17 pursuant to Section ~~100032~~ and employees shall review and sign
18 ~~the disclosure form at that time.~~ 100032.

19 SEC. 9. Section 100032 of the Government Code is amended
20 to read:

21 100032. (a) After the board opens the California Secure Choice
22 Retirement Savings Program for enrollment, any employer may
23 choose to have a payroll deposit retirement savings arrangement
24 to allow employee participation in the program under the terms
25 and conditions prescribed by the board.

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

33 (c) Within 24 months after the board opens the program for
34 enrollment, eligible employers with more than 50 eligible
35 employees and that do not offer ~~an employer-sponsored retirement~~
36 ~~plan or automatic enrollment payroll deduction IRA~~ *a retirement*
37 *savings program pursuant to subdivision (g)* shall have a payroll
38 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~~ *a retirement savings program pursuant to*
5 *subdivision (g)* shall have a payroll deposit retirement savings
6 arrangement to allow employee participation in the 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~~ *the board* shall designate an open enrollment period
16 during which eligible employees that previously opted out of the
17 program shall be ~~enrolled in the program unless the employee~~
18 ~~again elects to opt out as provided in this subdivision.~~ *given the*
19 *employee information packet with the disclosure and opt-out forms,*
20 *for the employee to enroll in the program or opt out of the program*
21 *by making a notation on the opt-out form.*

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

27 (g) ~~Employers shall retain the option at all times to set up any~~
28 ~~type of~~ *(1) An employer that provides an employer-sponsored*
29 *retirement plan, such as a defined benefit plan or a 401(k),*
30 *Simplified Employee Pension (SEP) plan, or Savings Incentive*
31 *Match Plan for Employees (SIMPLE) plan, or to offer that offers*
32 *an automatic enrollment payroll deduction IRA, instead of having*
33 *a payroll deposit retirement savings arrangement to allow employee*
34 *participation in the California Secure Choice Retirement Savings*
35 *Program. IRA, shall be exempt from the requirements of the*
36 *California Secure Choice Retirement Savings Program, if the plan*
37 *or IRA qualifies for favorable federal income tax treatment under*
38 *the federal Internal Revenue Code.*

39 (2) *An employer shall retain the option at all times to set up*
40 *and offer a qualified retirement plan instead of having a payroll*

1 *deposit retirement savings arrangement to allow employee*
2 *participation in the California Secure Choice Retirement Savings*
3 *Program.*

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

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

11 (j) By regulation, the board may adjust the contribution amount
12 set in subdivision (i) to no less than 2 percent and no more than 5
13 percent and may vary that amount within that 2 percent to 5 percent
14 range for participating employees according to the length of time
15 the employee has contributed to the program.

16 (k) The board may implement annual automatic escalation of
17 employee contributions.

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

20 (2) Automatic escalation shall result in no more than a
21 1-percent-of-salary increase in employee contributions per calendar
22 year.

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

26 SEC. 10. Section 100034 of the Government Code is amended
27 to read:

28 100034. (a) Employers shall not have any liability for an
29 employee's decision to participate in, or opt out of, the California
30 Secure Choice Retirement Savings Program, or for the investment
31 decisions of employees whose assets are deposited in the program.

32 (b) Employers shall not be a fiduciary, or considered to be a
33 fiduciary, over the California Secure Choice Retirement Savings
34 Trust or the program. *The program is a state-administered*
35 *program, not an employer-sponsored program. If the program is*
36 *subsequently found to be preempted by any federal law or*
37 *regulation, employers shall not be liable as plan sponsors. An*
38 *employer shall not bear responsibility for the administration,*
39 *investment, or investment performance of the program. An*

1 employer shall not be liable with regard to investment returns,
2 program design, and benefits paid to program participants.

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

7 (d) An employer shall not have civil liability, and no cause of
8 action shall arise against an employer, for acting pursuant to the
9 regulations prescribed by the board defining the roles and
10 responsibilities of employers that have a payroll deposit retirement
11 savings arrangement to allow employee participation in the
12 program.

13 SEC. 11. Section 100036 of the Government Code is amended
14 to read:

15 100036. The state shall not have any liability for the payment
16 of the retirement savings benefit earned by program participants
17 pursuant to this title. The state, and any of the funds of the state,
18 shall have no obligation for payment of the benefits arising from
19 this title.

20 SEC. 12. Section 100040 of the Government Code is repealed.

21 SEC. 13. Section 100042 of the Government Code is repealed.

22 SEC. 14. Section 100043 of the Government Code is amended
23 to read:

24 100043. (a) The board shall not implement the program if the
25 IRA arrangements offered fail to qualify for the favorable federal
26 income tax treatment ordinarily accorded to IRAs under the Internal
27 Revenue Code, or if it is determined that the program is an
28 employee benefit plan under the federal Employee Retirement
29 Income Security Act.

30 (b) (1) Prior to opening the program for enrollment, the board
31 shall report to the Governor and Legislature the specific date on
32 which the program will start to enroll program participants and
33 that the following prerequisites and requirements for the program
34 have been met:

35 (A) The United States Department of Labor has finalized a
36 regulation setting forth a safe harbor for savings arrangements
37 established by states for nongovernmental employees for the
38 purposes of the federal Employee Retirement Income Security
39 Act.

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

3 (C) The payroll deduction IRA arrangements offered by the
4 program qualify for the favorable federal income tax treatment
5 ordinarily accorded to IRA arrangements under the Internal
6 Revenue Code.

7 (D) The board has defined in regulation the roles and
8 responsibilities of employers pursuant to the criteria outlined in
9 the United States Department of Labor regulation described in
10 paragraph (2) and any associated guidance.

11 (E) The board has adopted ~~an~~ *a third-party administrator*
12 operational model that limits employer interaction and transactions
13 with the employee to the extent feasible.

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

16 SEC. 15. Section 100043.5 of the Government Code is
17 repealed.

18 SEC. 16. Section 100046 is added to the Government Code,
19 to read:

20 100046. (a) ~~Based upon findings and recommendations of the~~
21 ~~board pursuant to Section 100040, the~~ *The California Secure*
22 *Choice Retirement Savings Program* is approved by the Legislature
23 and implemented as of January 1, 2017. ~~The board, subject to its~~
24 ~~authority and fiduciary duty, shall design and implement the~~
25 ~~California Secure Choice Retirement Savings Program.~~ The board
26 shall consider and utilize the following parameters in designing
27 the program:

28 ~~(1) For up to three years, the board may establish managed~~
29 ~~accounts invested in United States Treasuries or similarly safe~~
30 ~~investments. During this time, the board may develop investment~~
31 ~~options that address risk-sharing and smoothing of market losses~~
32 ~~and gains. Options may include, but are not limited to, custom~~
33 ~~pooled, professionally managed funds that minimize costs and~~
34 ~~fees, the creation of a reserve fund, or the establishment of~~
35 ~~investment products.~~

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

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

1 ~~(4) The board shall determine the default payout method for~~
2 ~~retirees.~~

3 ~~(5)~~

4 (b) The board shall include a provider of in-home supportive
5 services, as regulated by Article 7 (commencing with Section
6 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and
7 Institutions Code in the program if the board determines the
8 inclusion to be legally permissible under federal and state laws
9 and regulations.

10 ~~(6)~~

11 (c) The board shall structure the program so as to ensure the
12 state is prohibited from incurring liabilities associated with
13 administering the program and that the state has no liability for
14 the program or its investments.

15 ~~(7)~~

16 (d) The board shall determine necessary costs associated with
17 outreach, customer service, enforcement, staffing and consultant
18 costs, and all other costs necessary to administer the program.

19 ~~(8)~~

20 (e) The board shall ~~partner~~ *consult* with employer representatives
21 to create an administrative structure that ~~ensures~~ *facilitates*
22 employee participation while addressing employer needs, including,
23 but not limited to, clearly defining employers' duties and liability
24 exemption pursuant to Section 100034.

25 ~~(9)~~

26 (f) The board shall include comprehensive worker education
27 and outreach in the program, and the board may collaborate with
28 state and local government agencies, community-based and
29 nonprofit organizations, foundations, vendors, and other entities
30 deemed appropriate to develop and secure ongoing resources for
31 education and outreach that reflect the cultures and languages of
32 the state's diverse workforce population.

33 ~~(10)~~

34 (g) The board shall include comprehensive employer education
35 and outreach in the program, with an emphasis on employers with
36 less than 100 employees, developed in consultation with employer
37 representatives, with the integration of the following components:

38 ~~(A)~~

39 (1) A program *Internet* Web site to assist the employers of
40 participating employees.

1 ~~(B)~~
2 (2) A toll-free help line for employers with live and automated
3 assistance.

4 ~~(C)~~
5 (3) Online *Internet* Web training.

6 ~~(D)~~
7 (4) Live presentations to business associations.

8 ~~(E)~~
9 (5) Targeted outreach to small businesses with 10 or less
10 employees.

11 ~~(b) In order to ensure timely implementation of the California~~
12 ~~Secure Choice Retirement Savings Program, the board shall have~~
13 ~~flexibility in designing and implementing the California Secure~~
14 ~~Choice Retirement Savings Program. The program parameters set~~
15 ~~forth in this section shall not be conclusive. The board shall have~~
16 ~~the authority to augment these requirements as necessary to fully~~
17 ~~implement the program and comply with the board's fiduciary~~
18 ~~duties.~~

19 SEC. 17. Section 100048 is added to the Government Code,
20 to read:

21 100048. The board may adopt regulations to implement this
22 title. The adoption, amendment, repeal, or readoption of a
23 regulation authorized by this section is deemed to address an
24 emergency, for purposes of Sections 11346.1 and 11349.6, and
25 the board is hereby exempted for this purpose from the
26 requirements of subdivision (b) of Section 11346.1.

27 SEC. 18. Section 100049 is added to the Government Code,
28 to read:

29 100049. A payroll deposit IRA arrangement offered pursuant
30 to the California Secure Choice Retirement Savings Program shall
31 have the same status as, and be treated consistently with, any other
32 IRA ~~qualified under Section 408(a) or 408(b) of the United States~~
33 ~~Code~~ for the purpose of determining eligibility or benefit level for
34 a program that uses a means test.

35 SEC. 19. Section 100050 is added to the Government Code,
36 to read:

37 100050. Funding for startup and first-year administrative costs
38 may be appropriated from the General Fund in the annual Budget
39 Act. The board shall repay the amount appropriated, plus interest
40 calculated at the rate earned by the Pooled Money Investment

1 Account. Necessary administrative costs in future years shall be
2 paid out of the administrative fund.

3 SEC. 20. Section 12302.2 of the Welfare and Institutions Code
4 is amended to read:

5 12302.2. (a) (1) If the state or a county makes or provides for
6 direct payment to a provider chosen by a recipient or to the
7 recipient for the purchase of in-home supportive services, the
8 department shall perform or ~~assure~~ *ensure* the performance of all
9 rights, ~~duties~~ *duties*, and obligations of the recipient relating to
10 those services as required for purposes of unemployment
11 compensation, unemployment compensation disability benefits,
12 workers' compensation, retirement savings accounts, including
13 payroll ~~deposit~~ *deduction* IRA arrangements offered pursuant to
14 the California Secure Choice Retirement Savings Program (Title
15 21 (commencing with Section 100000) of the Government Code),
16 federal and state income tax, and federal ~~old-age survivors~~ *old-age*,
17 *survivors*, and disability insurance benefits. Those rights, duties,
18 and obligations include, but are not limited to, registration and
19 obtaining employer account numbers, providing information,
20 notices, and reports, making applications and returns, and
21 withholding in trust from the payments made to or on behalf of a
22 recipient amounts to be withheld from the wages of the provider
23 by the recipient as an employer, including the sales tax extended
24 to support services by Article 4 (commencing with Section 6150)
25 of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation
26 Code, and transmitting those amounts along with amounts required
27 for all contributions, premiums, and taxes payable by the recipient
28 as the employer to the appropriate person or state or federal agency.
29 The department may ~~assure~~ *ensure* the performance of any or all
30 of these rights, duties, and obligations by contract with any person,
31 or any public or private agency.

32 (2) Contributions, premiums, and taxes shall be paid or
33 transmitted on the recipient's behalf as the employer for any period
34 commencing on or after January 1, 1978, except that contributions,
35 premiums, and taxes for federal and state income taxes and federal
36 ~~old-age, survivors~~ *survivors*, and disability insurance contributions
37 shall be paid or transmitted pursuant to this section commencing
38 with the first full month that begins 90 days after the effective date
39 of this section.

1 (3) Contributions, premiums, and taxes paid or transmitted on
2 the recipient's behalf for unemployment compensation, workers'
3 compensation, and the employer's share of federal ~~old-age~~
4 ~~survivors~~ *old-age, survivors*, and disability insurance benefits shall
5 be payable in addition to the maximum monthly amount established
6 pursuant to Section 12303.5 or subdivision (a) of Section 12304
7 or other amount payable to or on behalf of a recipient.
8 Contributions, premiums, or taxes resulting from liability incurred
9 by the recipient as employer for unemployment compensation,
10 workers' compensation, and federal old-age, ~~survivors~~ *survivors*,
11 and disability insurance benefits with respect to any period
12 commencing on or after January 1, 1978, and ending on or before
13 the effective date of this section shall also be payable in addition
14 to the maximum monthly amount established pursuant to Section
15 12303.5 or subdivision (a) of Section 12304 or other amount
16 payable to or on behalf of the recipient. Nothing in this section
17 shall be construed to permit any interference with the recipient's
18 right to select the provider of services or to authorize a charge for
19 administrative costs against any amount payable to or on behalf
20 of a recipient.

21 (b) If the state makes or provides for direct payment to a
22 provider chosen by a recipient, the Controller shall make any
23 deductions from the wages of in-home supportive services
24 personnel that are authorized by Sections 1152 and 1153 of the
25 Government Code, as limited by Section 3515.6 of the Government
26 Code, and for the sales tax extended to support services by Article
27 4 (commencing with Section 6150) of Chapter 2 of Part 1 of
28 Division 2 of the Revenue and Taxation Code.

29 (c) Funding for the costs of administering this section and for
30 contributions, premiums, and taxes paid or transmitted on the
31 recipient's behalf as an employer pursuant to this section shall
32 qualify, where possible, for the maximum federal reimbursement.
33 To the extent that federal funds are inadequate, notwithstanding
34 Section 12306, the state shall provide funding for the purposes of
35 this section.

O