

## Senate Bill No. 1234

### CHAPTER 804

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.

[Approved by Governor September 29, 2016. Filed with  
Secretary of State September 29, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1234, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement. 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 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 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. The bill would eliminate the authority of the board to establish certain investment options.

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 and certification are 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.

Appropriation: yes.

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

SECTION 1. Section 100000 of the Government Code is amended to read:

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

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

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

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

(2) “Eligible employee” does not include:

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

(B) Any employee on whose behalf an employer makes contributions to a Taft-Hartley pension trust fund.

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

(2) Upon a positive determination pursuant to subdivision (a) of Section 100046, eligible employer means an employer of a provider of in-home supportive services, as regulated by Article 7 (commencing with Section

12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

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

(A) The Treasurer.

(B) The Director of Finance, or his or her designee.

(C) The Controller.

(D) An individual with retirement savings and investment expertise appointed by the Senate Committee on Rules.

(E) An employee representative appointed by the Speaker of the Assembly.

(F) A small business representative appointed by the Governor.

(G) A public member appointed by the Governor.

(H) Two additional members appointed by the Governor.

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

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

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

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

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

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

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

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

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

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

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

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

(2) (A) During period described in paragraph (1), the board shall develop and implement an investment policy that defines the program's investment objectives and shall establish policies and procedures enabling investment objectives to be met in a prudent manner. The board shall seek to minimize participant fees and strive to implement program features that provide maximum possible income replacement balanced with appropriate risk in an IRA-based environment. The policy shall describe the investment options available to holders of individual savings accounts established as part of the program. Investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk to meet the investment objectives stated in the policy.

(B) The board may also develop investment option recommendations that address risk-sharing and smoothing of market losses and gains. Investment option recommendations may include, but are not limited to, the creation of a reserve fund or the establishment of customized investment

products. Implementation of an investment option recommendation pursuant to this subparagraph shall be contingent upon subsequent approval by the Legislature.

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

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

(f) The board shall approve an investment management entity or entities, the costs of which shall be paid out of funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust. Not later than 30 days after the close of each month, the board shall place on file for public inspection during business hours a report with respect to investments made pursuant to this section and a report of deposits in financial institutions.

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

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

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

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

(d) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by this title, including, but not limited to, board operations, program administrator and investment expenses, and enforcement and compliance costs. On and after six years from the date the program is implemented, on an annual basis, expenditures from the administrative fund

shall not exceed more than 1 percent of the total program fund. All costs of administration of the trust shall be paid out of the administrative fund.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Employ staff.

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

(9) Procure insurance against any loss in connection with the property, assets, or activities of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Arrange for collective, common, and pooled investment of assets of the retirement savings program or arrangements, including investments in



conjunction with other funds with which those assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale.

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

(d) Disseminate information concerning tax credits available to small business owners for allowing their employees to participate in the program, and the federal Retirement Savings Contribution Credit (Saver's Credit) available to lower and moderate-income households for qualified savings contributions.

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

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

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

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

(i) Allow participating employers to use the program to remit employees' contributions to their IRAs on their employees' behalf.

(j) Allow participating employers to make their own contributions to their employees' IRAs, provided that the contributions would be permitted under the Internal Revenue Code and would not cause the program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act.

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

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

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

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

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

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

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

(3) How to opt out of the program.

(4) The process for withdrawal of retirement savings.

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

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

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

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

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

(d) The disclosure form shall include a method for the employee to acknowledge that the employee has read all of the disclosures and understands their content.

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

(f) The employee information packet with the disclosure and opt-out forms shall be made available to employers through EDD and supplied to employees at the time of hiring. All new employees shall review the packet and acknowledge having received it.

(g) The employee information packet with the disclosure and opt-out forms shall be supplied to existing employees when the program is initially launched for that participating employer pursuant to Section 100032.

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

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

(b) Within 12 months after the board opens the program for enrollment, eligible employers with more than 100 eligible employees and that do not offer a retirement savings program pursuant to subdivision (g) shall have a payroll deposit retirement savings arrangement to allow employee participation in the program.

(c) Within 24 months after the board opens the program for enrollment, eligible employers with more than 50 eligible employees and that do not offer a retirement savings program pursuant to subdivision (g) shall have a

payroll deposit retirement savings arrangement to allow employee participation in the program.

(d) Within 36 months after the board opens the program for enrollment, all other eligible employers that do not offer a retirement savings program pursuant to subdivision (g) shall have a payroll deposit retirement savings arrangement to allow employee participation in the program.

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

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

(2) Following initial implementation of the program pursuant to this section, at least once every two years, the board shall designate an open enrollment period during which eligible employees that previously opted out of the program shall be given the employee information packet with the disclosure and opt-out forms, for the employee to enroll in the program or opt out of the program by making a notation on the opt-out form.

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

(g) (1) An employer that provides an employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or that offers an automatic enrollment payroll deduction IRA, shall be exempt from the requirements of the California Secure Choice Retirement Savings Program, if the plan or IRA qualifies for favorable federal income tax treatment under the federal Internal Revenue Code.

(2) An employer shall retain the option at all times to set up and offer a tax-qualified retirement plan, as described in paragraph (1), instead of having a payroll deposit retirement savings arrangement to allow employee participation in the California Secure Choice Retirement Savings Program.

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

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

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

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

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

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

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

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

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

(b) Employers shall not be a fiduciary, or considered to be a fiduciary, over the California Secure Choice Retirement Savings Trust or the program. The program is a state-administered program, not an employer-sponsored program. If the program is subsequently found to be preempted by any federal law or regulation, employers shall not be liable as plan sponsors. An employer shall not bear responsibility for the administration, investment, or investment performance of the program. An employer shall not be liable with regard to investment returns, program design, and benefits paid to program participants.

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

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

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

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

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

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

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

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

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

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

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

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

(D) The board has defined in regulation the roles and responsibilities of employers pursuant to the criteria outlined in the United States Department of Labor regulation described in subparagraph (A) and any associated guidance.

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

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

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

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

100046. The California Secure Choice Retirement Savings Program is approved by the Legislature and implemented as of January 1, 2017. The board shall consider and utilize the following parameters in designing the program:

(a) The board shall include a provider of in-home supportive services, as regulated by Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code in the program if the board determines, and the Director of the State Department of Social Services and the Director of the Department of Finance certify, in writing, all of the following:

(1) The inclusion meets all state and federal legal requirements.

(2) The appropriate employer of record has been identified for the purpose of satisfying all the program's employer requirements.

(3) The payroll deduction, described in Section 12302.2 of the Welfare and Institutions Code, can be implemented at reasonable costs.

(4) The inclusion does not create a financial liability for the state or employer of record.

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

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

(d) The board shall consult with employer representatives to create an administrative structure that facilitates employee participation while addressing employer needs, including, but not limited to, clearly defining employers' duties and liability exemption pursuant to Section 100034.

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

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

- (1) A program Internet Web site to assist the employers of participating employees.
- (2) A toll-free help line for employers with live and automated assistance.
- (3) Online Internet Web training.
- (4) Live presentations to business associations.
- (5) Targeted outreach to small businesses with 10 or less employees.

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

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

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

100049. A payroll deposit IRA arrangement offered pursuant to the California Secure Choice Retirement Savings Program shall have the same status as, and be treated consistently with, any other IRA for the purpose of determining eligibility or benefit level for a program that uses a means test.

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

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

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

12302.2. (a) (1) If the state or a county makes or provides for direct payment to a provider chosen by a recipient or to the recipient for the purchase of in-home supportive services, the department shall perform or ensure the performance of all rights, duties, and obligations of the recipient relating to those services as required for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, retirement savings accounts, including payroll deduction IRA arrangements offered pursuant to the California Secure Choice Retirement Savings Program (Title 21 (commencing with Section 100000) of the Government Code), federal and state income tax, and federal old-age, survivors, and disability insurance benefits. Those rights, duties, and

obligations include, but are not limited to, registration and obtaining employer account numbers, providing information, notices, and reports, making applications and returns, and withholding in trust from the payments made to or on behalf of a recipient amounts to be withheld from the wages of the provider by the recipient as an employer, including the sales tax extended to support services by Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, and transmitting those amounts along with amounts required for all contributions, premiums, and taxes payable by the recipient as the employer to the appropriate person or state or federal agency. The department may ensure the performance of any or all of these rights, duties, and obligations by contract with any person, or any public or private agency.

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

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

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

(c) Funding for the costs of administering this section and for contributions, premiums, and taxes paid or transmitted on the recipient's behalf as an employer pursuant to this section shall qualify, where possible, for the maximum federal reimbursement. To the extent that federal funds

are inadequate, notwithstanding Section 12306, the state shall provide funding for the purposes of this section.

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