

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1234

Introduced by Senators De León and Steinberg

(Principal coauthor: Assembly Member Furutani)

(Coauthors: Senators Hernandez, Pavley, and Price)

(Coauthors: Assembly Members Allen, Ammiano, Blumenfield, *Lara*,
and Solorio)

February 23, 2012

An act to add Section 20139 to, and to add Title 21 (commencing with Section 100000) to, the Government Code, and to add Section 1088.9 to the Unemployment Insurance Code, relating to retirement savings plans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would enact the California Secure Choice Retirement Savings Trust Act, which would create the California Secure Choice Retirement

Savings Trust to be administered by the California Secure Choice Retirement Savings Investment Board, which would also be established by the bill. The bill would require eligible employers, as defined, to offer a payroll deposit retirement savings arrangement so that eligible employees, as defined, could contribute a portion of their salary or wages to a retirement savings program account in the California Secure Choice Retirement Savings Program, as specified. The bill would require eligible employees to participate in the program, unless the employee opts out of the program, as specified. The bill would specify risk management and investment policies that the board would be subject to regarding administration of the program. The bill would require a specified percentage of the annual salary or wages of an eligible employee participating in the program to be deposited in the California Secure Choice Retirement Savings Trust, which would be segregated into a program fund and an administrative fund, both of which would be continuously appropriated to the board for purposes of the act. The bill would limit expenditures from the administrative fund, as specified. The bill would also ~~require~~ *authorize* the board to establish a Gain and Loss Reserve Account within the program fund.

The bill would, contingent upon sufficient interest and funding by vendors, as specified, require the board to establish a Retirement Investments Clearinghouse on its Internet Web site and a vendor registration process through which information about employer-sponsored retirement plans, and payroll deduction individual retirement accounts and annuities offered by private sector providers is made available for consideration by eligible employers.

The bill would require ~~an employer to use the opt-out form disseminated by the Employment Development Department exemption certificate to be used~~ to create an option for employees to elect to opt out of the program, *as specified*. The bill would, commencing 6 months after the program is ready to proceed, require the Employment Development Department to assess a penalty on any eligible employer that fails to make the program available to eligible employees, as specified. The bill also would make a statement of legislative findings. The bill would provide that the state would have no liability for the payment of the benefits under the program, as specified.

The bill, upon sufficient funds being made available through a nonprofit or private entity or federal funding, would require the board to conduct a market analysis to determine whether the necessary conditions for implementation can be met, as specified. The bill would

require moneys made available to conduct the market analysis to be deposited in the Secure Choice Retirement Savings Program Fund which would be created in the State Treasury. The bill would provide that the operational provisions of the California Secure Choice Retirement Savings Trust Act shall be operative only if the board determines that, based on the market analysis, the provisions will be self-sustaining, and sufficient funds are made available through a nonprofit or private entity, federal funding, or the annual Budget Act, as specified, to allow the board to study, develop, and obtain the approvals necessary to implement the program and the board determines that the program can until the trust has sufficient funds to be self-sustaining.

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

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

Existing law establishes the Board of Administration of the Public Employees' Retirement System and vests the board with various powers and duties.

This bill would authorize that board to administer funds in the California Secure Choice Retirement Savings Trust, as specified.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) California workers without access to an employer-sponsored
- 3 retirement plan need a seamless, lifelong savings system, providing
- 4 them with the opportunity to build their assets and helping them
- 5 to attain their future financial stability through a program that
- 6 offers secure and portable retirement savings.

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

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

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

15 (e) Providing California workers with a ~~guaranteed~~ *reliable*
16 retirement income to supplement social security, ~~traditionally~~
17 ~~funded by stable employer contributions via a defined benefit,~~
18 ~~employer-based pension plan,~~ is optimal to ensure that workers
19 accumulate the ~~benefits~~ *savings* they need for a secure retirement.
20 ~~California must pursue guaranteed replacement income programs,~~
21 ~~including defined benefit plans, for all working Californians.~~
22 *Ideally, all private sector workers would have access to*
23 *employer-sponsored retirement plans, but over 6.3 million*
24 *California workers, 75 percent of whom earn less than \$50,000*
25 *per year, do not have access to retirement savings opportunities*
26 *through their jobs. When workers are offered the opportunity to*
27 *save through their place of employment, they are significantly*
28 *more likely to participate and make steady and systematic*
29 *contributions to build their retirement savings.* Establishing and
30 offering a ~~universal~~ retirement savings program ~~to~~ for workers
31 without access to an employer-sponsored retirement plan or payroll
32 deduction IRA would provide a vital supplement to social security
33 income *and* would be an important step toward ~~ensuring~~ *improving*
34 the retirement security of all working Californians.

35 (f) ~~Though employer-sponsored guaranteed retirement income~~
36 ~~programs are valuable savings tools for workers, given the~~
37 ~~changing needs and work habits of California's workers, they alone~~
38 ~~are insufficient to afford workers a secure retirement. California~~
39 ~~workers need additional retirement savings options to ensure their~~
40 retirement security.

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

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

~~(i)~~

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

~~(j)~~

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

~~(k)~~

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

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

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

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

TITLE 21. THE CALIFORNIA SECURE CHOICE
RETIREMENT SAVINGS TRUST ACT

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

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

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

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

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

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

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

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

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

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

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

33 (h) “Stated interest rate” means the rate of interest-~~creditable~~
34 *allocated* to program accounts as determined by the board pursuant
35 to subdivision (c) of Section 100008.

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

38 (j) “Vendor” means a registered investment company or
39 admitted life insurance company qualified to do business in
40 California that provides retirement investment products. “Vendor”

1 *also includes a company that is registered to do business in*
2 *California that provides payroll services or recordkeeping services*
3 *and offers retirement plans or payroll deposit IRA arrangements*
4 *using products of regulated investment companies and insurance*
5 *companies qualified to do business in California. “Vendor” does*
6 *not include individual registered representatives, brokers, financial*
7 *planners, or agents.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) Domestic equities and international equities.

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

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

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

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

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

39 (G) Insurance agreements.

40 (H) FDIC-insured bank products.

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

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

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

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

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

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

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

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

39 (2) The weighted average maturity of the investments within
40 the program fund.

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

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

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

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

10 100004. (a) There is hereby established a retirement savings
11 trust known as the California Secure Choice Retirement Savings
12 Trust to be administered by the board for the purpose of promoting
13 greater retirement savings for California private employees in a
14 convenient, voluntary, ~~low-cost~~ *low-cost*, and portable manner.
15 ~~The~~ *After sufficient funds are made available for this title to be*
16 *operative pursuant to Section 100042, the* California Secure Choice
17 Retirement Savings Trust, as a self-sustaining trust, shall pay all
18 costs of administration *only* out of ~~earnings on~~ moneys on deposit
19 therein.

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

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

31 (d) Transfers may be made from the program fund to the
32 administrative fund for the purpose of paying operating costs
33 associated with administering the trust and as required by this title.
34 On an annual basis, expenditures from the administrative fund
35 shall not exceed more than 1 percent of the total program fund.
36 All costs of administration of the trust shall be paid out of the
37 administrative fund. *Operating costs associated with administering*
38 *the trust do not include the procurement of private underwriting*
39 *for the retirement savings' return.*

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

6 100006. (a) The board ~~shall~~ *may* establish a segregated account
7 within the program fund to be known as the Gain and Loss Reserve
8 Account, ~~and the~~ *The* board shall have sole authority over the
9 ~~account~~ *Gain and Loss Reserve Account, if established*. The Gain
10 and Loss Reserve Account ~~shall be maintained for the program~~
11 ~~and~~ may be used to ~~credit~~ *allocate* interest at the stated interest
12 rate for program years in which the board determines that the stated
13 interest rate cannot be met from investment earnings.

14 (b) The board shall establish a goal for the balance of the Gain
15 and Loss Reserve Account and shall periodically review the
16 sufficiency of the reserve account based on the recommendations
17 of the board's actuary.

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

27 (1) Whether or not the program has excess earnings.

28 (2) The sufficiency of the Gain and Loss Reserve Account in
29 light of the goal established pursuant to subdivision (b).

30 (3) The amount required for the program's administrative costs.

31 (4) The amount required for ~~crediting~~ *making allocations to*
32 individuals' accounts at the stated interest rate.

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

37 100008. (a) The California Secure Choice Retirement Savings
38 Program shall include, as determined by the board, one or more
39 payroll deposit IRA arrangements.

1 ~~(b) Individual accounts under the California Secure Choice~~
2 ~~Retirement Savings Program shall be nominal accounts.~~
3 ~~Contributions on behalf of the individual that are specifically~~
4 ~~identified as creditable to the program shall be treated as credits~~
5 ~~to the individual's California Secure Choice Retirement Savings~~
6 ~~Program account, together with interest credited at the stated~~
7 ~~interest rate and any additional earnings credited thereon. The~~
8 ~~balance of the credits in an individual's account shall determine~~
9 ~~the amount to which the individual is entitled under the program~~
10 ~~upon termination of coverage by the program. The individual shall~~
11 ~~not have the right or claim to any specific assets of the account,~~
12 ~~program, or program fund.~~

13 ~~(e)~~

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

20 ~~(2) Interest shall be ~~credited~~ *allocated* to program accounts and~~
21 ~~shall be computed at the stated interest rate on the balance of ~~credits~~~~
22 ~~*in* an individual's account and shall be compounded daily.~~

23 ~~(d)~~

24 ~~(c) An individual's retirement savings benefit under the program~~
25 ~~shall be an amount equal to the balance ~~of the credits~~ in the~~
26 ~~individual's program account on the date the retirement savings~~
27 ~~benefit becomes payable.~~

28 100010. (a) The board, in the capacity of trustee, shall have
29 the power and authority to do all of the following:

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

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

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

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

39 (5) Appoint a program administrator, *the costs of which shall*
40 *be paid out of funds held in the trust and shall not be attributed*

1 *to the administrative costs of the board in operating the trust, and*
2 *determine the duties of the program administrator and other staff*
3 *as necessary and set their compensation.*

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

6 (7) Employ staff.

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

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

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

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

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

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

34 (14) Facilitate compliance by the retirement savings program
35 or arrangements established under the program with all applicable
36 requirements for the program under the Internal Revenue Code of
37 1986, including tax qualification requirements or any other
38 applicable law and accounting requirements, including providing
39 or arranging for assistance to program sponsors and individuals

1 in complying with applicable law and tax qualification
2 requirements in a cost-effective manner.

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

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

13 100012. In addition to the powers and authority granted to the
14 board pursuant to Section 100010, the board shall have the power
15 and authority to do the following:

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

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

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

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

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

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

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

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

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

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

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

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

18 (j) Allow participating employers to use the program to
19 ~~contribute to their employees' remit employees' contributions to~~
20 ~~their individual retirement accounts on their employees' behalf or~~
21 ~~match their employees' contributions, behalf.~~

22 (k) *Allow participating employers to make their own*
23 *contributions to their employees' individual retirement accounts,*
24 *provided that the contributions would be permitted under the*
25 *Internal Revenue Code and would not cause the program to be*
26 *treated as an employee benefit plan under the federal Employee*
27 *Retirement Income Security Act.*

28 ~~(k)~~

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

32 *100013. The board shall ensure that an insurance, annuity, or*
33 *other funding mechanism is in place at all times that protects the*
34 *value of individuals' accounts. The funding mechanism shall*
35 *protect, indemnify, and hold the state harmless at all times against*
36 *any and all liability in connection with funding retirement benefits*
37 *pursuant to this title. The costs of the funding mechanism shall be*
38 *paid out of the funds held in the trust and shall not be attributed*
39 *to the administrative costs of the board in operating the trust.*

1 100014. (a) Prior to opening the California Secure Choice
 2 Retirement Savings Program for enrollment, the board shall design
 3 and disseminate to employers through the Employment
 4 Development Department (EDD) an employee information packet.
 5 The packet shall include background information on the program
 6 and appropriate disclosures for employees.

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

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

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

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

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

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

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

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

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

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

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

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

34 (e)

35 (f) The employee information packet shall be made available
 36 to employers through EDD and supplied to employees at the time
 37 of hiring. All new employees shall review the packet and
 38 acknowledge having read it by signing the signature line
 39 accompanied by the date of the signature.

40 (f)

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

5 100016. (a) Prior to opening the California Secure Choice
6 Retirement Savings Program for enrollment, if there is sufficient
7 interest by vendors to participate and provide the necessary
8 funding, the board shall establish both of the following:

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

11 (2) A vendor registration process through which information
12 about employer-sponsored retirement plans, and payroll deduction
13 ~~individual retirement accounts and annuities IRAs~~ offered by
14 private sector providers is made available for consideration by
15 eligible employers.

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

20 (1) A statement of experience in California and in other states
21 in providing employer-sponsored retirement plans, and payroll
22 deduction ~~individual retirement accounts and annuities IRAs~~.

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

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

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

37 (5) A discussion of the ability, experience, and commitment of
38 the vendor to provide retirement counseling and education services,
39 including, but not limited to, access to group meetings and
40 individual counseling by various means, including telephone and

1 telecommunications devices for the deaf (TDD), Internet, and
 2 face-to-face consultations by registered representatives.

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

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

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

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

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

33 (11) Certification by the vendor that the information provided
 34 to the board accurately reflects the provisions of the retirement
 35 investment products ~~they register~~ *it registers*.

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

38 100018. Registration shall be offered to vendors once annually,
 39 and renewal of registration shall be required at least once every
 40 five years thereafter for vendors ~~who~~ *that* wish to continue to

1 participate in the Retirement Investments Clearinghouse. The board
2 shall provide public notice prior to the initial registration, annual
3 registration, and registration renewal periods.

4 100020. (a) The board may remove a vendor from the registry
5 if the vendor submits materially inaccurate information to the
6 board, does not remit assessed fees within 60 days, or fails to
7 submit notice of material changes to its registered investment
8 products. Vendors found to have submitted materially inaccurate
9 information to the board shall be allowed 60 days to correct the
10 information.

11 (b) The board shall remove a vendor from the registry if
12 *investments offered by the vendor are products of a regulated*
13 *investment company or insurance company that is not licensed or*
14 *has had its license revoked by the ~~National Association of~~*
15 *Securities Dealers- Financial Industry Regulatory Authority or the*
16 *California Department of Insurance for engaging in conduct*
17 *prohibited by those entities.*

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

20 100022. (a) The board shall maintain the Retirement
21 Investments Clearinghouse containing the information required in
22 Section 100016 about the retirement investment products offered
23 by each registered vendor and objective comparisons of vendors
24 and types of products.

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

30 (c) The board's Internet Web site shall include a table showing,
31 for each registered fund, the total fee cost in dollars incurred by a
32 shareholder who initially invested five thousand dollars (\$5,000),
33 earned a 5 percent rate of return for one-, five-, 10-, 15-, and
34 20-year time periods. This table shall be accompanied by a
35 disclaimer that the rate of return is for purposes of illustrating the
36 respective impacts of different fee amounts on each investment,
37 and is not to predict future investment returns.

38 100024. The board shall include a notice of the existence of,
39 and the Internet Web site address for, the Retirement Investments

1 Clearinghouse in a notice disseminated to eligible employers
2 through the Employment Development Department.

3 100026. A vendor may not charge a fee associated with a
4 registered product that is not disclosed.

5 100028. (a) The actual cost of establishing the vendor
6 registration system and the Retirement Investments Clearinghouse
7 shall be borne equally by registered vendors, based on the total
8 number of registered vendors. Each registered vendor shall pay a
9 one-time establishment fee equal to a pro rata share of the
10 establishment costs charged to vendors that register with the board
11 prior to the close of the initial registration period, as determined
12 by the board. The one-time establishment fee charged to vendors
13 that register with the board after the completion of the initial
14 registration period shall be distributed equally among registered
15 vendors that have paid the establishment fee and credited toward
16 subsequent maintenance and administrative fees charged to each
17 vendor.

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

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

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

34 100030. (a) The board and the program, and its officers and
35 employees, are not responsible for, and shall not be held liable for,
36 the adequacy of the information provided by the participating
37 vendors *and* contained in the clearinghouse. The clearinghouse
38 maintained by the board serves only to provide information
39 supplied by the participating vendors for the consideration of the
40 selection of retirement investment products.

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

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

8 100032. (a) After the board opens the California Secure Choice
9 Retirement Savings Program for enrollment, any employer may
10 choose to have a payroll deposit retirement savings arrangement
11 to allow employee participation in the program.

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

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

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

30 (e) (1) Each eligible employee shall be enrolled in the program
31 unless the employee elects not to participate in the program. An
32 eligible employee may elect to opt out of the program by making
33 a notation on the ~~exemption certificate produced by the~~
34 ~~Employment Development Department~~ *opt-out form*.

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

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

6 (f) Employers shall retain the option at all times to set up any
7 type of employer-sponsored retirement plan, such as a defined
8 benefit plan or a 401(k), Simplified Employee Pension (SEP) plan,
9 or Savings Incentive Match Plan for Employees (SIMPLE) plan,
10 or to offer an automatic enrollment payroll deduction IRA, instead
11 of having a payroll deposit retirement savings arrangement to allow
12 employee participation in the California Secure Choice Retirement
13 Savings Program.

14 (g) An eligible employee may also terminate his or her
15 participation in the program at any time in a manner prescribed
16 by the board and thereafter by making a notation on the ~~exemption~~
17 ~~certificate produced by the Employment Development Department~~
18 *opt-out form*.

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

22 (i) By regulation, the board may adjust the contribution amount
23 set in subdivision (h) to no less than 2 percent and no more than
24 4 percent and may vary that amount within that 2 percent to 4
25 percent range for participating employees according to the length
26 of time the employee has contributed to the program.

27 100034. (a) Employers shall not have any liability for an
28 employee's decision to participate in, or opt out of, the California
29 Secure Choice Retirement Savings Program, or for the investment
30 decisions of employees whose assets are deposited in the program.

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

38 (c) An employer's voluntary contribution under subdivision (j)
39 of Section 100012 shall not in any way contradict the provisions

1 of this section or change the employer’s relationship to the program
2 or an employer’s obligations to employees.

3 100036. The state shall not have any liability for the payment
4 of the retirement savings benefit ~~that is guaranteed~~ to *earned* by
5 program participants pursuant to this title. Any financial liability
6 for the payment of benefits in excess of funds available under the
7 program shall be borne by the ~~underwriters pursuant to the contract~~
8 ~~entered into with the board on behalf of the program participants~~
9 *entities with whom the board contracts to provide an insurance,*
10 *annuity, or other funding mechanism to protect the value of*
11 *individuals’ accounts pursuant to Section 100013.* The state, and
12 any of the funds of the state, shall have no obligation for payment
13 of the ~~guaranteed~~ benefits arising from this title.

14 100038. (a) Notwithstanding Section 10231.5, the board shall
15 submit an annual audited financial report, prepared in accordance
16 with generally accepted accounting principles, on the operations
17 of the California Secure Choice Retirement Savings Trust by
18 August 1 to the Governor, the Controller, the State Auditor, and
19 the Legislature, pursuant to Section 9795. The annual audit shall
20 be made by an independent certified public accountant and shall
21 include, but not be limited to, direct and indirect costs attributable
22 to the use of outside consultants, independent contractors, and any
23 other persons who are not state employees.

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

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

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

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

32 100040. The board shall initially conduct a market analysis to
33 determine whether the necessary conditions for implementation
34 of this title can be met, including, but not limited to, likely
35 participation rates, participants’ comfort with various investment
36 vehicles and degree of risk, contribution levels, and the rate of
37 account closures and rollovers. The board shall conduct this
38 analysis only if sufficient funds *to initiate and complete the*
39 *required market analysis* are made available through a nonprofit
40 or private entity, or from federal funding. *The Secure Choice*

1 *Retirement Savings Program Fund is hereby created in the State*
 2 *Treasury. Moneys made available to conduct the market analysis*
 3 *shall be deposited in this fund.* The board shall forward and offer
 4 to present its findings to the Chair of the Senate Committee on
 5 Labor and Industrial Relations, the Chair of the Assembly
 6 Committee on Labor and Employment, the Chair of the Senate
 7 Committee on Public Employment and Retirement, and the Chair
 8 of the Assembly Committee on Public Employees, Retirement and
 9 Social Security.

10 100042. With the exceptions of subdivision (a) of Section
 11 100002, and Sections 100040, *100043*, and 100044, the provisions
 12 of this title shall become operative only if *the board determines*
 13 *that, based on the market analysis, the provisions of this title will*
 14 *be self-sustaining, and funds are made available through a nonprofit*
 15 *or other private entity, federal funding, or an annual Budget Act*
 16 *appropriation in amounts sufficient to allow the board to study,*
 17 *develop, and obtain the approvals necessary to implement this title*
 18 *and the board notifies the Director of Finance that, based on its*
 19 *market analysis, the provisions of this title can be self-sustaining*
 20 *pursuant to this title until the trust has sufficient funds to be*
 21 *self-sustaining.*

22 100043. *The board shall not implement the program if the IRA*
 23 *arrangements offered fail to qualify for the favorable federal*
 24 *income tax treatment ordinarily accorded to IRAs under the*
 25 *Internal Revenue Code, or if it is determined that the program is*
 26 *an employee benefit plan under the federal Employee Retirement*
 27 *Income Security Act.*

28 100044. This title shall be construed liberally in order to
 29 effectuate its legislative intent. The purposes of this title and all
 30 of its provisions with respect to the powers granted shall be broadly
 31 interpreted to effectuate that intent and purposes and not as to any
 32 limitation of powers.

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

35 1088.9. (a) The department shall have the power and duties
 36 necessary to administer the enforcement of employer compliance
 37 with Title 21 (commencing with Section 100000) of the
 38 Government Code.

39 (b) An eligible employer shall use the ~~department's exemption~~
 40 ~~certificate~~ *opt-out form in the employee information packet*

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

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

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

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

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

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

O