

## GOVERNMENT CODE - GOV

### TITLE 21. THE ~~CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS TRUST~~CALSAVERS RETIREMENT SAVINGS TRUST ACT [100000 - 100050]

( Title 21 added by Stats. 2012, Ch. 734, Sec. 3. )

#### 100000.

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

(a) "Board" means the ~~California Secure Choice Retirement Savings Investment Board~~CalSavers Retirement Savings Board.

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

*(Amended by Stats. 2018, Ch. 37, Sec. 29. (AB 1817) Effective June 27, 2018.)*

#### 100002.

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

(A) The Treasurer.

(B) The Director of Finance, or the director's 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 themselves 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 CalSavers 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) ~~During period described in paragraph (1), the~~The board shall ~~develop and implement maintain~~ an investment policy statement that defines the program's investment objectives and ~~shall establish articulates~~ 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.

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

*(Amended by Stats. 2019, Ch. 364, Sec. 7. (SB 112) Effective September 27, 2019.)*

100004.

(a) There is hereby established a retirement savings trust known as the ~~California Secure Choice Retirement Savings Trust~~CalSavers 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~~CalSavers 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~~CalSavers 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 CalSavers 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~~CalSavers Retirement Savings Trust is an instrumentality of the state. Any security issued, managed, or invested by the ~~California Secure Choice Retirement Savings Investment Board~~CalSavers Retirement Savings Board within the ~~California Secure Choice Retirement Savings Trust~~CalSavers Retirement Savings Trust on behalf of an individual participating within the CalSavers Retirement Savings Program shall be exempt from Sections 25110, 25120, and 25130 of the Corporations Code.

*(Amended by Stats. 2018, Ch. 37, Sec. 31. (AB 1817) Effective June 27, 2018.)*

#### 100008.

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

*(Amended by Stats. 2018, Ch. 37, Sec. 32. (AB 1817) Effective June 27, 2018.)*

#### 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~~CalSavers 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. The board may delegate this rulemaking authority to staff by resolution.

*(Amended by Stats. 2016, Ch. 804, Sec. 5. (SB 1234) Effective January 1, 2017.)*

## 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 CalSavers 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.  
*(Amended by Stats. 2018, Ch. 37, Sec. 33. (AB 1817) Effective June 27, 2018.)*

#### 100014.

- (a) ~~Prior to opening the CalSavers Retirement Savings Program for enrollment,~~ the board shall design and disseminate to employers 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 their 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 they are 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 eligible employees by the CalSavers Retirement Savings Program 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.  
*(Amended by Stats. 2019, Ch. 24, Sec. 25. (SB 83) Effective June 27, 2019.)*

#### 100016.

- (a) Prior to opening the CalSavers Retirement Savings Program for enrollment, if there is sufficient interest by vendors to participate and provide the necessary funding, the board shall establish both of the following:
- (1) A Retirement Investments Clearinghouse on its Internet Web site.
  - (2) A vendor registration process through which information about employer-sponsored retirement plans, and payroll deduction IRAs offered by private sector providers is made available for consideration by eligible employers.
- (b) Vendors that would like to participate in the board's Retirement Investments Clearinghouse and be listed on the board's Internet Web site as a registered vendor shall provide all of the following information:
- (1) A statement of experience in California and in other states in providing employer-sponsored retirement plans, and payroll deduction IRAs.
  - (2) A description by the vendor of the types of retirement investment products offered.
  - (3) A disclosure of all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees, supported by documentation as required for prospectus disclosure by the National Association of Securities Dealers and the Securities and Exchange Commission. Vendors shall be required to provide information regarding the impact of product fees upon a hypothetical investment, as described in Section 100022.
  - (4) The types of products, product features, services offered to participants, and information about how to access product prospectuses or other relevant product information.
  - (5) A discussion of the ability, experience, and commitment of the vendor to provide retirement counseling and education services, including, but not limited to, access to group meetings and individual counseling by various means, including telephone and telecommunications devices for the deaf (TDD), Internet, and face-to-face consultations by registered representatives.
  - (6) A statement of the financial strength of the vendor by identifying its ratings assigned by nationally recognized rating services that evaluate the financial strength of similar companies.
  - (7) The location of offices and counselors, individual registered representatives, brokers, financial planners, agents, or other methods of distribution, of the vendor that would serve employers and their employees in California.
  - (8) A description of the ability of the vendor to comply with all applicable provisions of federal and state law governing retirement plans, including minimum distribution requirements and contribution limits.
  - (9) To the extent applicable, the demonstrated ability of the vendor to offer an appropriate array of accumulation funding options, including, but not limited to, investment options that offer guaranteed returns on contributions and the conversion of retirement savings account balances to secure retirement income, a diversified mix of value, growth, growth and income, hybrid, and index funds or accounts across large, medium, and small capitalization asset classes, both domestic and international.
  - (10) A discussion of the range of administrative and customer services provided, including asset allocation, accounting and administration of benefits for individual



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

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

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

*(Amended by Stats. 2018, Ch. 37, Sec. 35. (AB 1817) Effective June 27, 2018.)*

#### **100018.**

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### **100020.**

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

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

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### **100022.**

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

(b) The clearinghouse shall include information on investment performance based upon the investment's average annual total return as measured by a nationally

recognized rating service selected by the board for standard periods of time of not less than one year.

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### **100024.**

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### **100026.**

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### **100028.**

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

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

(c) Each registered vendor shall pay an administrative fee for each retirement investment product it offers to employers, which shall represent the actual costs associated with processing the information related to the investment option and

presenting it on the Retirement Investments Clearinghouse, as determined by the board.

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### 100030.

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

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

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### 100032.

(a) ~~After the board opens the CalSavers Retirement Savings Program for enrollment, any~~Any eligible 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 or by contacting the program by phone.

(2) Following initial implementation of the program pursuant to this section, at least once every two years, the board ~~shall~~may 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 any earlier other 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 CalSavers 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 CalSavers 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 or by phone.

(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.

*(Amended by Stats. 2018, Ch. 37, Sec. 36. (AB 1817) Effective June 27, 2018.)*

#### 100034.

(a) Employers shall not have any liability for an employee's decision to participate in, or opt out of, the CalSavers 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~~CalSavers 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.  
*(Amended by Stats. 2018, Ch. 37, Sec. 37. (AB 1817) Effective June 27, 2018.)*

#### 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.

*(Amended by Stats. 2016, Ch. 804, Sec. 11. (SB 1234) Effective January 1, 2017.)*

#### 100038.

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

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

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

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

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### 100043.

(a) The board shall not ~~implement~~ operate 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 program is structured in a manner to keep the program from being classified as an employee benefit plan subject to the federal Employee Retirement Income Security Act.

(B) 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.

(C) The board has defined in regulation the roles and responsibilities of employers in a manner to keep the program from being classified as an employee benefit plan subject to the federal Employee Retirement Income Security Act.

(D) 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.

*(Amended by Stats. 2017, Ch. 21, Sec. 10. (AB 119) Effective June 27, 2017.)*

#### 100044.

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

*(Added by Stats. 2012, Ch. 734, Sec. 3. (SB 1234) Effective January 1, 2013.)*

#### 100046.

The CalSavers 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-fewer~~ 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-fewer~~ employees.

*(Amended by Stats. 2018, Ch. 37, Sec. 38. (AB 1817) Effective June 27, 2018.)*

#### **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.

*(Added by Stats. 2016, Ch. 804, Sec. 17. (SB 1234) Effective January 1, 2017.)*

#### **100049.**

A payroll deposit IRA arrangement offered pursuant to the CalSavers 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.

*(Amended by Stats. 2018, Ch. 37, Sec. 39. (AB 1817) Effective June 27, 2018.)*

**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.

*(Added by Stats. 2016, Ch. 804, Sec. 19. (SB 1234) Effective January 1, 2017.)*