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SB 1234 (De León) (2016) California Secure Choice Retirement Savings Trust Act

PURPOSE:

Following the determination by the California Secure Choice Retirement Savings Investment Board that the establishment of the California Secure Choice Retirement Savings Program is financially viable, self-sustaining, and legally permissible, this bill authorizes the Board to move forward with implementation and incorporates the Board's recommendations to the Legislature.

CALIFORNIA'S SECURE CHOICE PROGRAM—PROGRESS TO DATE:

Four years ago, California became the first state in the nation to enact legislation (SB 1234 (De León-Steinberg), Ch. 734, Statutes of 2012) to create a vital supplement to Social Security income for private sector workers that lack access to retirement plans through their jobs. The primary objective of this landmark law is to provide a reliable, affordable, and completely portable retirement savings opportunity for the nearly 7 million Californians without a workplace retirement plan.

The California Secure Choice Retirement Savings Investment Board has been meeting since September 2013, and the required independent Market Analysis and Feasibility Study was finalized by Overture Financial LLC and released on March 17, 2016. Key findings of the study include: 6.8 million workers are potentially eligible to enroll in the program, and that projected worker participation rates are sufficient to enable the Secure Choice Program to achieve broad coverage well above the minimum threshold for financial sustainability. The report also evaluated various investment options and operational models for the program design.

Since the enactment of the original SB 1234 in 2012, Pro Tem De León and Treasurer John Chiang have traveled to Washington, D.C. on numerous occasions to meet with White House officials, the U.S. Department of Labor (DOL), the U.S. Treasury Department, and key policymakers on Capitol Hill. As a result of this advocacy, in July 2015, President Barack Obama issued a directive to the Secretary of Labor Thomas E. Perez for the U.S. DOL to issue regulations that provide states a clear pathway to launch retirement programs for private sector workers.

On November 16, 2015, the U.S. DOL Employee Benefits Security Administration (EBSA) released a proposed regulation that designates a safe harbor from ERISA for state laws that facilitate enrollment in state-administered payroll deduction individual retirement accounts (IRAs). These new federal regulations are expected to be finalized by summer 2016.

Another significant development to date has been the assessment by outside legal counsel that the Secure Choice Program, and employers that facilitate worker participation in the program, would not be considered an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA). This conclusion is important because under the existing statute, the Board cannot implement the program if it is determined that the program is an employee benefit plan under the federal ERISA.

On March 28, 2016, based on the findings of the final report, stakeholder feedback, and public comment, the Board voted unanimously to submit recommendations to the Legislature and encouraged the Legislature and the Governor to move forward with the full implementation of the California Secure Choice Program.

BACKGROUND ON RETIREMENT INSECURITY IN CALIFORNIA:

According to a report by the UC Berkeley Center for Labor Research and Education, *6.3 Million Private Sector Workers in California Lack Access to a Retirement Plan on the Job* (June 2012), nearly 50% of *middle-income* workers are at risk of sliding into poverty when they can no longer work. Over two-thirds (68%) of workers that lack access to workplace savings plans work for small firms with less than 100 employees, and each generation is expected to retire poorer than the last—55% of young workers age 25-44 have projected retirement incomes below 200% of the federal policy level, compared to 39% of workers age 45-54 and 33% of workers age 55-64.

Research commissioned by California Retirement Security for All, *Aging California's Retirement Crisis: State and Local Indicators* (October 2015), analyzed the state's changing demographics and notes that by the year 2035, the senior population in California (age 60 and older) will have increased 64%, to 12 million, from 7.3 million in 2015. Also, the oldest group of seniors (age 80+) comprise the fastest growing age group within the senior population, and their size will more than double in the next two decades.

Social Security is the foundation of retirement income for the vast majority of retirees in California, but these payments alone—today averaging $1,328 per month—are simply not enough to sustain workers in retirement. Although Social Security has reduced the poverty rate among retirees in general, women and minorities are disproportionately represented among retirees living in poverty and among low-income retirees. In California, approximately 2/3 of the retirees living in poverty are women.

On February 24, 2016, AARP and Small Business Majority released an opinion poll that revealed that two-thirds of small business owners in California support the creation of a state retirement savings program that would help small businesses and their employees save for retirement. In addition, nearly three-fourths (73%) of the respondents expressed the belief that offering such a program would give their business a competitive edge.

Overall, the lack of retirement savings impacts all Californians, as seniors without sufficient retirement income will need to rely on government assistance for housing, health care and other basic necessities. The California Secure Choice Program will provide participants with a professionally-managed, lifelong retirement savings system that offers them the opportunity to build their assets and achieve financial stability when they can no longer work.

KEY FEATURES OF THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS PROGRAM:

Governing and Oversight Board

The California Secure Choice Retirement Savings Investment Board (http://www.treasurer.ca.gov/scib/) is modeled after ScholarShare, California's 529 College Savings Plan. The Board is comprised of nine members: the State Treasurer (Chair), State Controller, Director of the Department of Finance, a retirement savings and investment expert appointed by the Senate Rules Committee, an employee representative appointed by the Speaker of the Assembly, a small business representative appointed by the Governor, and three additional public members appointed by the Governor.

The Board is charged with the administration of the Secure Choice Program, and to date has overseen the completion of the legal analysis and the mandated market analysis and feasibility study. In moving forward with the full implementation of the program, the Board will be the ongoing administrator for the hiring of private firms to manage the investment portfolio and the individual retirement savings accounts.

<u>Disclosures for Employees and Employer Liability Protections</u>

Employees offered the opportunity to participate in the Secure Choice Program will receive a program information packet with a disclosure form that includes the benefits and risks of making retirement contributions, the mechanics of how to participate in or opt out of the program, the process for the withdrawal of retirement savings, and how to obtain additional information about the program.

The disclosure form will clearly inform employees that employers are not liable for their decisions whether to participate in or opt out of the program, or for employee investment decisions, and state that their employer is not a fiduciary of the California Secure Choice Retirement Savings Trust or program, the employer does not bear responsibility for how the program is administered, and the employer is not liable with regard to investment returns and benefits paid to program participants.

In addition, the disclosure form will notify employees that the program is not an employer-sponsored retirement plan, their employers are not in a position to provide financial advice, and that they should contact financial advisors if they want to seek financial advice.

To notify employees that the state is not liable for the retirement savings benefit, the disclosure form will also specify that the Secure Choice program fund is not guaranteed by the State of California.

Employees that choose to participate in the program will be required to acknowledge that they have received and read all of the disclosures.

<u>Employee Participation in the Secure Choice Program</u>

When the Secure Choice Board officially opens the program for enrollment, only employers that do not offer their own employer-sponsored retirement plan (such as a 401(k), SEP, or SIMPLE plan) or automatic enrollment payroll deduction IRA will have to perform the ministerial duty of supplying the information packet and disclosure form, and allow their employees to remit contributions through payroll deduction.

Employees will be automatically enrolled, and employee participation will be phased-in over a three year timeframe, starting with the largest employers:

- Employers with 100+ employees: allow employee participation within 12 months of the Board opening the program for enrollment;
- Employers with 50+ employees: within 24 months;
- All other eligible employers: within 36 months.

Participation by employees will be completely voluntarily, and employees will retain the ability to opt out at any time.

The default employee contribution rate will be set at 3%, with Board authority to adjust the amount between 2-5%. Through regulation, the Board could also establish an auto-escalation contribution rate, capped at 8% of salary with a limitation on increasing the rate no more than 1% annually. Employees will be able to specify their level of contribution if they do not want to contribute the default rate, and could also opt out of auto-escalation at any time.

Employees that already have access to a workplace retirement plan could also voluntarily participate in the Secure Choice Program. However, their employer will not be obligated to allow them to use their payroll system to make automatic payroll contributions to the program.

Role of Employers

Employers that opt to make the Secure Choice Program available to their employees will not bear any fiduciary responsibility and will not be required to pay administrative fees or comply with federal quarterly-reporting mandates. The administrative function of employers will be limited to providing employees with the program information packet and disclosure form, and allowing their employees access to their payroll system to make payroll deductions to the program.

Due to current federal prohibitions, voluntary employer contributions to employees' individual retirement accounts will only be permitted if there is a future change in federal law and employer contributions would not cause the Secure Choice Program to be treated as an employee benefit plan under ERISA.

Retirement Investments Clearinghouse

If there is sufficient interest by financial services providers to participate, the Secure Choice Board will set up a Retirement Investments Clearinghouse on its web site that will contain information about employer-sponsored retirement plans and payroll deduction IRAs and annuities offered by private providers.

Employers will receive a notification from the Employment Development Department that the Retirement Investments Clearinghouse is available as a resource to explore alternatives to allowing employees participation in the Secure Choice Program.

Taxpayer Protections

Prior to the establishment of the Secure Choice Program, the Board was required to conduct a market analysis and feasibility study to determine the financial viability of the implementation, including the assessment of likely participation rates, contribution levels, and the feasibility of investment vehicles. The final report was released in March 2016, and concludes that the program would be financially viable, self-sustaining, and legally permissible.

The existing statute also contains state protections—disclosures to program participants will include the notification that the Secure Choice Program is not guaranteed by the State of California, and there is an explicit mandate that the state shall not have any liability for the payment of the retirement savings benefit earned by program participants.

Implementation of California's Secure Choice Program

The Secure Choice Board is prohibited from implementing the program if the IRA arrangements offered fail to qualify for favorable tax treatment under the Internal Revenue Code, or if it is determined that the program is an employee benefit plan under ERISA.