



Bill Analysis

Author: Assembly Committee
on Budget

Sponsor:

Bill Number: AB 102

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Amended: June 22, 2020

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Related Bills: See Legislative
History

SUBJECT

CalSavers Retirement Savings Trust Act/ Franchise Tax Board (FTB) enforcement of employer penalties for employer noncompliance.

SUMMARY

The bill, under the Government Code (GC), would rename the California Secure Choice Retirement Savings Trust Act as the CalSavers Retirement Savings Trust Act (CalSavers), authorize the CalSavers Retirement Savings Board (CalSavers Board) to enforce eligible employer compliance, including referring noncompliant employer accounts to the FTB for collection, as specified, and making other changes.

Under the Revenue and Taxation Code (R&TC), this bill would authorize the FTB to take specified collection action for an eligible employer referred by the CalSavers Board for noncompliance and conduct eligible employer appeals related to the imposition of penalties for noncompliance.

Under the Unemployment Insurance Code, the bill would remove authorization for the Employment Development Department (EDD) to enforce eligible employer compliance in the CalSavers Retirement Savings Program.

This analysis only discusses the provision that would impact the department's programs and operations.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The June 22, 2020, amendments removed provisions under the GC related to state public employment and added the provisions discussed in this analysis.

This is the department's first analysis of this bill.

REASON FOR THE BILL

The reason for this bill is to facilitate employer compliance thereby increasing employee participation in the CalSavers Retirement Savings Program.

ANALYSIS

CalSavers Retirement Savings Program

This bill, under the GC, would rename the California Secure Choice Retirement Savings Trust Act as the CalSavers Retirement Savings Trust Act, and would provide the following:

The CalSavers Board, rather than the EDD, would be vested with the power and duties necessary to administer the enforcement of employer compliance with California Retirement Savings Trust Act, and would be required to issue to each employer who fails to allow its eligible employees to participate in the CalSavers Retirement Savings Program a notice of penalty application.

Upon service of a final notice of penalty application by the CalSavers Board, each eligible employer that, without good cause, fails to allow its eligible employees to participate in the CalSavers Retirement Savings Program would be subject to a penalty of \$250 per eligible employee and an additional penalty of \$500 per eligible employee if noncompliance continues as specified under the R&TC.

After the CalSavers Board informs the FTB of the eligible employer's noncompliance, the FTB would issue a first notice of the imposition of a penalty to an eligible employer for failure to comply, as discussed below.

The CalSavers Board would be required to reimburse the FTB for the costs incurred by the FTB administering the program authorized by this bill.

Franchise Tax Board Collection – Amounts Imposed for Employer Noncompliance

This bill would add Article 6 (commencing with Section 19285) of Chapter 5 of Part 10.2 of Division 2 of the R&TC, *Collection of Amounts Imposed by the CalSavers Board and Related Appeals*.

Under the R&TC, penalties imposed pursuant to the CalSavers Retirement Savings Act, upon an eligible employer for failure to comply, could be referred by the CalSavers Board to the FTB for collection under guidelines prescribed by the FTB, including setting forth a minimum dollar amount subject to referral and collection.

This bill would define the following terms and phrases:

- “CalSavers Retirement Savings Program” would have the same meaning as “CalSavers Retirement Savings Program” as described in subdivision (b) of Section 100000 of the GC.
- “Eligible employer” would have the same meaning as “eligible employer” as described in subdivision (d) of Section 100000 of the GC.

Franchise Tax Board – Notices to Noncompliant Eligible Employers and Appeals

This bill would provide, upon FTB’s written notice to a noncompliant eligible employer, that any amount referred to the FTB, would be treated as final and due and payable to the State of California, and could be collected from the eligible employer by the FTB in any manner authorized under the law for collection of a delinquent personal income tax liability, except that an overpayment of any liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 10.2 could not be credited against any balance due pursuant to Section 19286 that would be added by this bill.

This bill would require the FTB to issue the following notices:

- A first notice of the imposition of a penalty for noncompliance with the CalSavers Retirement Savings Program under Title 21 (commencing with Section 100000) of the GC to an eligible employer after the CalSavers Board informs the FTB of the eligible employer’s noncompliance.
- A second notice of the imposition of a penalty for noncompliance with the CalSavers Retirement Savings Program to an eligible employer 90 days after the issuance of the first notice, unless an employer files an appeal.
- If an appeal is filed by the eligible employer within 90 days after a determination by the FTB sustaining the penalty, the FTB would be required to issue a second notice of the imposition of a penalty for noncompliance with the CalSavers Retirement Savings Program to an eligible employer.

This bill would allow an eligible employer, within 90 days after the issuance of the notice of noncompliance, to appeal the imposition of a penalty for noncompliance under Title 21 (commencing with Section 100000) of the GC.

The FTB would be required to hear and determine an eligible employer’s appeal of the CalSavers Board’s imposition of a penalty as provided in GC section 100033, and upon the conclusion of the appeal would be required to notify the eligible employer and the CalSavers Board of its determination in writing.

This bill also would provide:

- Amounts collected by the FTB would be transmitted to the CalSavers Board for deposit in the CalSavers Retirement Savings Trust pursuant to Title 21 (commencing with Section 100000) of the GC, or remitted by means of the Fi\$Cal accounting system.
- A collection under this article would not be a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).
- Any information, information sources, or enforcement remedies and capabilities available to the CalSavers Board or the state referring to the amount due for penalties related to the CalSavers Retirement Savings Program would be available to the FTB to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the FTB.
- The activities required to implement and administer this article shall not interfere with the primary mission of the FTB to administer Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001).
- The FTB would be required to seek additional resources needed to accept referrals from CalSavers Board pursuant to Section 19286 for the collection of specified penalty amounts for noncompliance with the CalSavers Retirement Savings Program.

Additionally, this bill would allow the FTB to do the following:

- Prescribe regulations necessary or appropriate to carry out the purposes of this article. The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the GG would not apply to any regulation adopted by the FTB, pursuant to Article 6 that would be created by this bill.
- Disclose information to the CalSavers Board (notwithstanding Section 19542) to facilitate the collection of amounts due pursuant to Section 19286 or Title 21 (commencing with Section 100000) of the GC and the appeals of the determination of the CalSavers Board in a final notice of penalty application.

Effective/Operative Date

This bill, providing for appropriations related to the Budget Bill and identified as a bill related to the budget in the Budget Bill, would be effective immediately upon enactment and would be operative as of that date.

Federal/State Law

No provision comparable in federal law.

State Law

CalSavers Retirement Savings Program

Current state law generally requires California employers that do not offer an employer-sponsored retirement plan and have five or more employees to facilitate their employees' participation in California's new CalSavers Retirement Savings Program. The registration deadline depends on the number of employees:

- More than 100 employees: September 30, 2020
- More than 50 employees: June 30, 2021
- Five or more employees: June 30, 2022

The EDD is authorized to administer the enforcement of employer compliance with the CalSavers Retirement Savings Program.

An eligible employer, as defined, that without good cause, fails to allow its eligible employees to participate in the CalSavers Retirement Savings Program must pay a penalty as follows:

- \$250 per eligible employee if noncompliance extends 90 days or more after the notice, and
- An additional \$500 per eligible employee if found to be in noncompliance 180 days or more after the notice.

The EDD also provides to the CalSavers Board employer tax information for use in the administration of, and to facilitate compliance with, the California Secure Choice Retirement Savings Trust Act (Title 21 of the Government Code).

FTB Collection Program

FTB's Collection program collects tax owed through self-assessment, audit, settlement, and filing enforcement. The automated systems collect revenue from taxpayers who voluntarily comply while manual collection efforts make sure taxpayers who don't comply pay their fair share.

In addition to the collection of taxes owed, the FTB also collects certain nontax debt, including: court ordered debt, delinquent vehicle registration, federal debts (Treasury offset program), and collection of other state taxes (Multistate offset program).

FTB does not currently collect nontax debt related to the CalSavers Retirement Savings Program.

Implementation Considerations

Implementing this bill would require the department to enter into an interagency agreement with the CalSavers Board, develop and issue notices for noncompliant employers, modify information systems, provide customer service, and conduct and resolve appeals.

Technical Considerations

None noted.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

SB 1042 (Pan, 2019/2020), would rename the California Secure Choice Retirement Savings Trust Act as the CalSavers Retirement Savings Trust Act, and would make additional changes. SB 1042 failed to pass by the constitutional deadline.

AB 1837 (Committee on Budget, Chapter 37, Statutes of 2018), among other changes, authorized the EDD to administer the enforcement of employer compliance including the assessment of penalties for failure to comply with the CalSavers Retirement Savings Program.

SB 1234 (De León, Chapter 804, Statutes of 2016), among other provisions, expressed Legislative approval of the California Secure Choice Retirement Savings Program and specified that the program be implemented January 1, 2017.

SB 1234 (De León, Chapter 374, Statutes of 2012) enacted the California Secure Choice Retirement Savings Trust Act.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Reimbursement for the program costs would be provided through an interagency agreement with FTB and the CalSavers Board as this bill would require the CalSavers Board to reimburse the FTB for the costs incurred by the FTB in administering the program that would be authorized by this bill.

Staff estimates a cost of approximately \$380,000 for fiscal year 2020/2021, \$288,000 for fiscal year 2021/2022, \$1.68M for fiscal year 2022/2023, \$857,000 fiscal year 2023/2024, and \$497,000 for fiscal year 2024/2025 for resources to update information systems, develop and issue notices, provide customer service, and resolve appeals.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended June 22, 2020, would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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