

HOUSE BILL NO. 1432

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KENDRICK.

3547H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto twenty-one new sections relating to the Missouri secure choice savings program act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto twenty-one new sections, to be known as sections 285.800, 285.805, 285.810, 285.815, 285.820, 285.825, 285.830, 285.835, 285.840, 285.845, 285.850, 285.855, 285.860, 285.865, 285.870, 285.875, 285.880, 285.885, 285.895, 285.900, and 285.905, to read as follows:

285.800. Sections 285.800 to 285.905 shall be known and may be cited as the "Missouri Secure Choice Savings Program Act".

285.805. Unless the context requires a different meaning or as expressly provided in this section, all terms used in sections 285.800 to 285.905 shall have the same meanings as when used in a comparable context in the Internal Revenue Code. For purposes of sections 285.800 to 285.905, the following terms mean:

- (1) "Board", the Missouri secure choice savings board established under section 285.825;
- (2) "Department", the department of revenue;
- (3) "Employee", any individual who is eighteen years of age or older, who is employed by an employer, and who has wages that are earned in Missouri during a calendar year under chapter 143;
- (4) "Employer", a person or entity engaged in a business, industry, profession, trade, or other enterprise in Missouri, whether for-profit or not-for-profit, that:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

- 13 (a) Has at no time during the previous calendar year employed fewer than twenty-
14 five employees in the state;
- 15 (b) Has been in business at least two years; and
- 16 (c) Has not offered a qualified retirement plan including, but not limited to, a plan
17 qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section
18 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code in the preceding two
19 years;
- 20 (5) "Enrollee", any employee who is enrolled in the program;
- 21 (6) "Fund", the Missouri secure choice savings program fund;
- 22 (7) "Internal Revenue Code", Internal Revenue Code of 1986, or any successor law,
23 in effect for the calendar year;
- 24 (8) "IRA", a Roth IRA (individual retirement account) under Section 408A of the
25 Internal Revenue Code;
- 26 (9) "Participating employer", an employer or small employer that provides a
27 payroll deposit retirement savings arrangement as provided for by sections 285.800 to
28 285.905 for its employees who are enrollees in the program;
- 29 (10) "Payroll deposit retirement savings arrangement", an arrangement by which
30 a participating employer allows enrollees to remit payroll deduction contributions to the
31 program;
- 32 (11) "Program", the Missouri secure choice savings program;
- 33 (12) "Small employer", a person or entity engaged in a business, industry,
34 profession, trade, or other enterprise in Missouri, whether for-profit or not-for-profit, that
35 notifies the department that it is interested in being a participating employer and that
36 meets at least one of the following conditions:
- 37 (a) Employed fewer than twenty-five employees at any one time in the state
38 throughout the previous calendar year; or
- 39 (b) Has been in business less than two years;
- 40 (13) "Wages", any compensation within the meaning of Section 219(f)(1) of the
41 Internal Revenue Code that is received by an enrollee from a participating employer
42 during the calendar year.

285.810. A retirement savings program in the form of an automatic enrollment
2 payroll deduction IRA, to be known as the "Missouri Secure Choice Savings Program",
3 is hereby established and shall be administered by the board for the purpose of promoting
4 greater retirement savings for private sector employees in a convenient, low-cost, and
5 portable manner.

285.815. 1. The "Missouri Secure Choice Savings Program Fund" is hereby established as a trust outside of the state treasury, with the board created under section 285.825 as its trustee. The fund shall include the individual retirement accounts of enrollees, which shall be accounted for as individual accounts. Moneys in the fund shall consist of moneys received from enrollees and participating employers under automatic payroll deductions and contributions to savings made under sections 285.800 to 285.905. The fund shall be operated in a manner determined by the board; provided that, the fund shall be operated so that the accounts of enrollees established under the program meet the requirements for IRAs under the Internal Revenue Code.

2. The amounts deposited in the fund shall not constitute property of the state, and the fund shall not be construed to be a department, institution, or agency of the state. Amounts on deposit in the fund shall not be commingled with state funds, and the state shall have no claim to or against, or interest in, such funds.

285.820. 1. There is hereby created in the state treasury the "Missouri Secure Choice Administrative Fund", which shall consist of any grants or other moneys designated for administrative purposes from the state, any unit of federal or local government, or any other person, firm, partnership, or corporation. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. Moneys in the fund shall be used solely to pay for the administrative expenses, including start-up administrative expenses, that the board incurs in the performance of its duties under sections 285.800 to 285.905.

2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

3. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

285.825. 1. There is hereby created the "Missouri Secure Choice Savings Board". The board shall consist of the following five members:

- (1) The state treasurer, or his or her designee, who shall serve as chair;
- (2) The commissioner of the office of administration, or his or her designee;
- (3) A public representative with expertise in retirement savings plan administration, investment, or both, appointed by the governor with the advice and consent of the senate;
- (4) A representative of participating employers, appointed by the governor with the advice and consent of the senate; and

10 **(5) A representative of enrollees, appointed by the governor with the advice and**
11 **consent of the senate.**

12 **2. Members of the board shall serve without compensation but may be reimbursed**
13 **for necessary travel expenses incurred in connection with their board duties from funds**
14 **appropriated for that purpose.**

15 **3. Members appointed by the governor shall serve terms of four years, except for**
16 **the initial appointments, which shall be for the following lengths:**

17 **(1) The public representative shall be appointed for a term of four years;**

18 **(2) The representative of participating employers shall be appointed for a term of**
19 **three years; and**

20 **(3) The representative of enrollees shall be appointed for a term of two years.**

21 **4. A vacancy in the term of an appointed board member shall be filled for the**
22 **balance of the unexpired term in the same manner as the original appointment.**

23 **5. Each board member, before assuming office, shall take an oath that he or she**
24 **will diligently and honestly administer the affairs of the board and that he or she will not**
25 **knowingly violate or willingly permit to be violated any of the provisions of law applicable**
26 **to the program. The oath shall be certified by the officer before whom it is taken and**
27 **immediately filed in the office of the secretary of state.**

285.830. The board, the individual members of the board, the trustee appointed
2 **under section 285.835, any other agents appointed or engaged by the board, and all persons**
3 **-serving as program staff shall discharge their duties with respect to the program solely in**
4 **the interest of the program's enrollees and beneficiaries as follows:**

5 **(1) For the exclusive purposes of providing benefits to enrollees and beneficiaries**
6 **and defraying reasonable expenses of administering the program;**

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

11 **(3) By using any contributions paid by employees and employers into the trust**
12 **exclusively for the purpose of paying benefits to the enrollees of the program, for the cost**
13 **of administration of the program, and for investments made for the benefit of the program.**

285.835. In addition to the other duties and responsibilities stated under sections
2 **285.800 to 285.905, the board shall:**

3 **(1) Cause the program to be designed, established, and operated in a manner that:**

4 **(a) Accords with best practices for retirement savings vehicles;**

5 **(b) Maximizes participation, savings, and sound investment practices;**

- 6 (c) Maximizes simplicity, including ease of administration for participating
7 employers and enrollees;
- 8 (d) Provides an efficient product to enrollees by pooling investment funds;
- 9 (e) Ensures the portability of benefits; and
- 10 (f) Provides for the decumulation of enrollee assets in a manner that maximizes
11 financial security in retirement;
- 12 (2) Appoint a trustee to the IRA fund in compliance with Section 408 of the Internal
13 Revenue Code;
- 14 (3) Explore and establish investment options, subject to section 285.850, that offer
15 employees returns on contributions and the conversion of individual retirement savings
16 account balances to secure retirement income without incurring debt or liabilities to the
17 state;
- 18 (4) Establish the process by which interest, investment earnings, and investment
19 losses are allocated to individual program accounts on a pro rata basis and are computed
20 at the interest rate on the balance of an individual's account;
- 21 (5) Make and enter into contracts necessary for the administration of the program
22 and fund including, but not limited to, retaining and contracting with investment
23 managers, private financial institutions, other financial and service providers, consultants,
24 actuaries, counsel, auditors, third-party administrators, and other professionals as
25 necessary;
- 26 (6) Conduct a review of the performance of any investment vendors every four
27 years including, but not limited to, a review of returns, fees, and customer service. A copy
28 of reviews conducted under this subdivision shall be posted to the board's website;
- 29 (7) Determine the number and duties of staff members needed to administer the
30 program and assemble such a staff including, as needed, employing staff, appointing a
31 program administrator, and entering into contracts with the state treasurer to make
32 employees of the state treasurer's office available to administer the program;
- 33 (8) Cause moneys in the fund to be held and invested as pooled investments
34 described under section 285.850, with a view to achieving cost savings through efficiencies
35 and economies of scale;
- 36 (9) Evaluate and establish the process by which an enrollee is able to contribute a
37 portion of his or her wages to the program for automatic deposit of those contributions and
38 the process by which the participating employer provides a payroll deposit retirement
39 savings arrangement to forward those contributions and related information to the
40 program including, but not limited to, contracting with financial service companies and
41 third-party administrators with the capability to receive and process employee information

42 and contributions for payroll deposit retirement savings arrangements or similar
43 arrangements;

44 (10) Design and establish the process for enrollment under section 285.865,
45 including the process by which an employee can opt not to participate in the program,
46 select a contribution level, select an investment option, and terminate participation in the
47 program;

48 (11) Evaluate and establish the process by which an individual may voluntarily
49 enroll in and make contributions to the program;

50 (12) Accept any grants, appropriations, or other moneys from the state; any unit
51 of federal, state, or local government; or any other person, firm, partnership, or
52 corporation solely for deposit into the fund, whether for investment or administrative
53 purposes;

54 (13) Evaluate the need for, and procure as needed, insurance against any and all
55 loss in connection with the property, assets, or activities of the program, and indemnify as
56 needed each member of the board from personal loss or liability resulting from a member's
57 action or inaction as a member of the board;

58 (14) Make provisions for the payment of administrative costs and expenses for the
59 creation, management, and operation of the program, including the costs associated with
60 subsection 2 of section 285.825; subdivisions (5), (6), (7), (9), and (13) of this section;
61 subsection 2 of section 285.850; and subsection 1 of section 285.885. Subject to
62 appropriation, the state may pay administrative costs associated with the creation and
63 management of the program until sufficient assets are available in the fund for that
64 purpose. Thereafter, all administrative costs of the fund, including repayment of any start-
65 up funds provided by the state, shall be paid only out of moneys on deposit therein.
66 However, private funds or federal funding received under subdivision (12) of this section
67 in order to implement the program until the fund is self-sustaining shall not be repaid
68 unless those funds were offered contingent upon the promise of such repayment. The
69 board shall keep annual administrative expenses as low as possible, but in no event shall
70 they exceed seventy-five hundredths of one percent of the total trust balance;

71 (15) Allocate administrative fees to individual retirement accounts in the program
72 on a pro rata basis;

73 (16) Set minimum and maximum contribution levels in accordance with limits
74 established for IRAs by the Internal Revenue Code;

75 (17) Facilitate education and outreach to employers and employees;

76 (18) Facilitate compliance by the program with all applicable requirements for the
77 program under the Internal Revenue Code, including tax qualification requirements or
78 any other applicable law and accounting requirements;

79 (19) Carry out the duties and obligations of the program in an effective, efficient,
80 and low-cost manner;

81 (20) Exercise any and all other powers reasonably necessary for the effectuation
82 of the purposes, objectives, and provisions of sections 285.800 to 285.905 pertaining to the
83 program; and

84 (21) Deposit into the Missouri secure choice administrative fund all grants, gifts,
85 donations, fees, and earnings from investments from the Missouri secure choice savings
86 program fund that are used to recover administrative costs. All expenses of the board shall
87 be paid from the Missouri secure choice administrative fund.

285.840. The board shall annually prepare and adopt a written statement of
2 investment policy that includes a risk management and oversight program. This
3 investment policy shall prohibit the board, program, and fund from borrowing for
4 investment purposes. The risk management and oversight program shall be designed to
5 ensure that an effective risk management system is in place to monitor the risk levels of the
6 program and fund portfolio, to ensure that the risks taken are prudent and properly
7 managed, to provide an integrated process for overall risk management, and to assess
8 investment returns as well as risk to determine if the risks taken are adequately
9 compensated compared to applicable performance benchmarks and standards. The board
10 shall consider the statement of investment policy and any changes in the investment policy
11 at a public hearing.

285.845. 1. The board shall engage, after an open bid process, an investment
2 manager or managers to invest the fund and any other assets of the program. Moneys in
3 the fund may be invested or reinvested by the state treasurer's office or may be invested
4 in whole or in part under contract with private investment managers, as selected by the
5 board. In selecting the investment manager or managers, the board shall take into
6 consideration and give weight to the investment manager's fees and charges in order to
7 reduce the program's administrative expenses.

8 2. The investment manager or managers shall comply with any and all applicable
9 federal and state laws, rules, and regulations, as well as any and all rules, policies, and
10 guidelines promulgated by the board with respect to the program and the investment of
11 the fund including, but not limited to, the investment policy.

12 **3. The investment manager or managers shall provide such reports as the board**
13 **deems necessary for the board to oversee each investment manager's performance and the**
14 **performance of the fund.**

285.850. 1. The board shall establish as an investment option a life-cycle fund with
2 **a target date based upon the age of the enrollee. This shall be the default investment option**
3 **for enrollees who fail to elect an investment option unless and until the board designates**
4 **by rule a new investment option as the default as described under subsection 3 of this**
5 **section.**

6 **2. The board may also establish any or all of the following additional investment**
7 **options:**

8 **(1) A conservative principal protection fund;**

9 **(2) A growth fund;**

10 **(3) A secure return fund whose primary objective is the preservation of the safety**
11 **of principal and the provision of a stable and low-risk rate of return. If the board elects**
12 **to establish a secure return fund, the board may procure any insurance, annuity, or other**
13 **product to insure the value of individuals' accounts and guarantee a rate of return. The**
14 **cost of such funding mechanism shall be paid out of the fund. Under no circumstances**
15 **shall the board, program, fund, the state, or any participating employer assume any**
16 **liability for investment or actuarial risk. The board shall determine whether to establish**
17 **such investment options based upon an analysis of their cost, risk profile, benefit level,**
18 **feasibility, and ease of implementation; or**

19 **(4) An annuity fund.**

20 **3. If the board elects to establish a secure return fund, the board shall then**
21 **determine whether such option shall replace the target date or life-cycle fund as the default**
22 **investment option for enrollees who do not elect an investment option. In making such**
23 **determination, the board shall consider the cost, risk profile, benefit level, and ease of**
24 **enrollment in the secure return fund. The board may at any time thereafter revisit this**
25 **question and, based upon an analysis of these criteria, establish either the secure return**
26 **fund or the life-cycle fund as the default for enrollees who do not elect an investment**
27 **option.**

285.855. Interest, investment earnings, and investment losses shall be allocated to
2 **individual program accounts as established by the board under subdivision (4) of section**
3 **285.835. An individual's retirement savings benefit under the program shall be an amount**
4 **equal to the balance in the individual's program account on the date the retirement savings**
5 **benefit becomes payable. The state shall have no liability for the payment of any benefit**
6 **to any participant in the program.**

285.860. 1. Before the opening of the program for enrollment, the board shall design and disseminate to all employers an employer information packet and an employee information packet, which shall include background information on the program, appropriate disclosures for employees, and information regarding the vendor's website described under section 285.865.

2. The board shall provide for the contents of both the employee information packet and the employer information packet.

3. The employee information packet shall include a disclosure form. The disclosure form shall explain, 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) How to participate in the program with a level of employee contributions other than three percent;

(5) The process for withdrawal of retirement savings;

(6) How to obtain additional information about the program;

(7) That employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make under sections 285.800 to 285.905;

(8) That the program is not an employer-sponsored retirement plan; and

(9) That the program fund is not guaranteed by the state.

4. The employee information packet shall also include a form for an employee to note his or her decision to opt out of participation in the program or elect to participate with a level of employee contributions other than three percent.

5. Participating employers shall supply the employee information packet to employees upon launch of the program. Participating employers shall supply the employee information packet to new employees at the time of hiring, and new employees may opt out of participation in the program or elect to participate with a level of employee contributions other than three percent at that time.

285.865. 1. Except as otherwise provided under section 285.900, the program shall be implemented, and enrollment of employees shall begin, within twenty-four months after the effective date of sections 285.800 to 285.905. The provisions of this section shall be in force after the board opens the program for enrollment.

5 **2. Each employer shall establish a payroll deposit retirement savings arrangement**
6 **to allow each employee to participate in the program, at most, nine months after the board**
7 **opens the program for enrollment.**

8 **3. Employers shall automatically enroll in the program each of their employees who**
9 **has not opted out of participation in the program using the form described under section**
10 **285.860 and shall provide payroll deduction retirement savings arrangements for such**
11 **employees and deposit, on behalf of such employees, these funds into the program. Small**
12 **employers may, but are not required to, provide payroll deduction retirement savings**
13 **arrangements for each employee who elects to participate in the program.**

14 **4. Enrollees shall have the ability to select a contribution level into the fund. This**
15 **level may be expressed as a percentage of wages or as a dollar amount up to the deductible**
16 **amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue**
17 **Code. Enrollees may change their contribution level at any time, subject to rules**
18 **promulgated by the board. If an enrollee fails to select a contribution level using the form**
19 **described in section 285.860, he or she shall contribute three percent of his or her wages**
20 **to the program; provided that, such contributions shall not cause the enrollee's total**
21 **contributions to IRAs for the year to exceed the deductible amount for the enrollee's tax**
22 **year under Section 219(b)(1)(A) of the Internal Revenue Code.**

23 **5. Enrollees may elect an investment option from the permitted investment options**
24 **listed under section 285.850. Enrollees may change their investment option at any time,**
25 **subject to rules promulgated by the board. In the event that an enrollee fails to select an**
26 **investment option, that enrollee shall be placed in the investment option selected by the**
27 **board as the default under section 285.850. If the board has not selected a default**
28 **investment option under section 285.850, an enrollee who fails to select an investment**
29 **option shall be placed in the life-cycle fund investment option.**

30 **6. Following initial implementation of the program in accordance with this section,**
31 **at least once every year, participating employers shall designate an open enrollment period**
32 **during which employees who previously opted out of the program may enroll in the**
33 **program.**

34 **7. An employee who opts out of the program who subsequently wants to participate**
35 **through the participating employer's payroll deposit retirement savings arrangement may**
36 **only enroll during the participating employer's designated open enrollment period or at**
37 **an earlier time if permitted by the participating employer.**

38 **8. Employers shall retain the option at all times to set up any type of employer-**
39 **sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee**
40 **Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE), or to offer**

41 an automatic enrollment payroll deduction IRA, instead of having a payroll deposit
42 retirement savings arrangement to allow employee participation in the program.

43 9. An employee may terminate his or her participation in the program at any time
44 in a manner prescribed by the board.

45 10. The board shall establish and maintain a website designed to assist employers
46 in identifying private sector providers of retirement arrangements that can be set up by
47 the employer rather than allowing employee participation in the program under sections
48 285.800 to 285.905. However, the board shall only establish and maintain a website under
49 this subsection if there is sufficient interest in such a website by private sector providers
50 and if the private sector providers furnish the funding necessary to establish and maintain
51 the website. The board shall provide public notice of the availability of and the process for
52 inclusion on the website before it becomes publicly available. This website shall be
53 available to the public before the board opens the program for enrollment, and the website
54 address shall be included on any website posting or other materials regarding the program
55 offered to the public by the board.

285.870. Employee contributions deducted by the participating employer through
2 payroll deduction shall be paid by the participating employer to the fund using one or
3 more payroll deposit retirement savings arrangements established by the board under
4 subdivision (9) of section 285.835, either:

5 (1) On or before the last day of the month following the month in which the
6 compensation otherwise would have been payable to the employee in cash; or

7 (2) Before such later deadline prescribed by the board for making such payments,
8 but no later than the due date for the deposit of tax required to be deducted and withheld
9 relating to collection of income tax at source on wages or for the deposit of tax required to
10 be paid under the unemployment insurance system for the payroll period to which such
11 payments relate.

285.875. 1. The state shall have no duty or liability to any party for the payment
2 of any retirement savings benefits accrued by any individual under the program. Any
3 financial liability for the payment of retirement savings benefits in excess of funds available
4 under the program shall be borne solely by the entities with whom the board contracts to
5 provide insurance to protect the value of the program.

6 2. No state board, commission, or agency, or any officer, employee, or member
7 thereof, is liable for any loss or deficiency resulting from particular investments selected
8 under sections 285.800 to 285.905, except for liability that arises out of a breach of
9 fiduciary duty under section 285.830.

285.880. 1. Participating employers shall not have any liability for an employee's decision to participate in or opt out of the program or for the investment decisions of the board or of any enrollee.

2. A participating employer shall not be a fiduciary, or considered a fiduciary, over the program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the program. A participating employer shall not be liable with regard to investment returns, program design, or benefits paid to program participants.

285.885. 1. The board shall annually submit:

(1) An audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program during each calendar year, before July first of the following year, to the governor, the commissioner of the office of administration, the state treasurer, and the general assembly. 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 for the administration of the program; and

(2) A report prepared by the board, which shall include, but not be limited to, a summary of the benefits provided by the program, including the number of enrollees in the program, the percentage and amounts of investment options and rates of return, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the program and the fund.

2. In addition to any other statements or reports required by law, the board shall provide periodic reports at least annually to participating employers, reporting the names of each enrollee employed by the participating employer and the amounts of contributions made by the participating employer on behalf of each employee during the reporting period, as well as to enrollees, reporting contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. Such reports may include any other information regarding the program as the board may determine.

285.895. The board and the department shall promulgate rules to implement the provisions of sections 285.800 to 285.905. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review,

7 to delay the effective date, or to disapprove and annul a rule are subsequently held
8 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
9 after August 28, 2020, shall be invalid and void.

285.900. If the board does not obtain adequate funds to implement the program
2 within the time frame set forth under section 285.865, the board may delay implementation
3 of the program.

285.905. The board shall request in writing an opinion or ruling from the
2 appropriate entity with jurisdiction over the federal Employee Retirement Income Security
3 Act regarding the applicability of the federal Employee Retirement Income Security Act
4 to the program. The board shall not implement the program if the IRA arrangements
5 offered under the program fail to qualify for the favorable federal income tax treatment
6 ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that
7 the program is an employee benefit plan and state or employer liability is established under
8 the federal Employee Retirement Income Security Act.

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