

Assembly Bill No. 1177

CHAPTER 451

An act to add and repeal Title 21.1 (commencing with Section 100100) of the Government Code, relating to financial institutions.

[Approved by Governor October 4, 2021. Filed with Secretary of State October 4, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1177, Santiago. California Public Banking Option Act.

Existing law, the CalSavers Retirement Savings Trust Act, creates in state government the CalSavers Retirement Savings Board and requires the board to, among other things, design and implement the CalSavers Retirement Savings Program.

This bill, the California Public Banking Option Act, until January 1, 2032, would require the Treasurer to convene, on or before September 1, 2022, the CalAccount Blue Ribbon Commission to be composed of certain members, including the Treasurer or the Treasurer's designee. The act would require the commission to, on or before July 1, 2024, conduct, by contracting with one or more entities with appropriate expertise, and deliver, as prescribed, a market analysis to determine if it is feasible to implement a "CalAccount Program," which, if implemented, would have certain characteristics, including that it would be a program established by the state for the purpose of protecting consumers who lack access to traditional banking services from predatory, discriminatory, and costly alternatives, which offers Californians access to a voluntary, zero-fee, zero-penalty, federally insured transaction account, known as a CalAccount, and related payment services at no cost to accountholders, including robust and geographically diverse mechanisms for accessing account funds and account management tools that facilitate the automation of basic financial transactions designed to serve the needs of individuals with low or fluctuating income. The bill would require the commission to hold a public hearing to review the market analysis and, after holding that hearing, would authorize the commission to issue a report to accompany the market analysis, as prescribed. The bill would make the operation of the act contingent upon an appropriation by the Legislature in the Budget Act or another statute for its purposes.

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

SECTION 1. This act shall be known, and may be cited, as the California Public Banking Option Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) With high unemployment rates, homelessness rising, and an unprecedented wave of evictions looming as a result of the COVID-19 pandemic, the financial stability of the state's most vulnerable residents has become a matter of particularly urgent concern, not only to those individuals themselves but to the economic health of the state as a whole.

(b) Access to basic financial services, including demand deposit (checking) and savings accounts, is a critical component of financial stability. One in four California households is unbanked or underbanked. Underbanked households are defined as those that have a bank account but have used alternative financial services (AFS) for transactions, including check cashing and money orders, and for credit, including payday loans. Among underbanked households, AFS transaction use is three times more prevalent than the use of AFS for credit. Around 17 percent of United States households use AFS transactions. These transaction services can be a significant expense for low-income Californians. For example, check cashers charge as much as 10 percent of the cost of the check being cashed. In 2018, AFS costs for unbanked and underbanked Americans totaled \$189,000,000,000 in fees and interest, which means the average annual cost per person for using AFS was \$3,000.

(c) Predatory banking practices, including expensive overdraft fees, create a vicious cycle leading to the lasting exclusion of Californians from traditional and affordable financial services and disproportionately harm low-income people and people of color. Banking options that target the poor generate significant revenue through these exploitative practices. In 2019, 84 percent of those fees were paid by 9 percent of accountholders, and those customers typically carried low balances averaging less than \$350. According to the San Francisco Office of Financial Empowerment, rates of involuntary account closures were higher in counties with high African American populations as well as non-white "Other" populations. Involuntary account closures that are reported to reporting agencies like ChexSystems, which keeps records of customers' deposit account histories, can then lead to further exclusion from affordable financial services. The Consumer Financial Protection Bureau has found that, based on the most recent data from 2005, up to 19 million people had ChexSystems records. Although the majority of ChexSystems records result from repeated overdrafts, situations where the customer was a victim of fraud, or bank errors, a ChexSystems record can prevent a person from opening a new bank account, resulting in the unbanking of customers.

(d) Unbanked households pay proportionally more for their financial services, lack secure means of saving, have fewer opportunities to build credit, and are rejected for loans at far higher rates. Basic financial transactions, including the payment of rent, utilities, and other recurring bills or charitable contributions, are a particularly formidable challenge for households lacking access to important tools, including automated bill pay, or whose monthly income fluctuates too much to make automated processes viable. Because they have fewer options when their money runs short,

unbanked households face a far more destructive cycle of punitive action when they default on their recurring bills, which leads to compounding interest and further debt. For all these reasons, exclusion from traditional financial services significantly increases the risk of poverty and homelessness and places an unnecessary burden on the entire economy.

(e) Limited access to affordable financial services is a problem that disproportionately impacts low-income communities and communities of color. In 2017, Californians earning less than \$15 per hour made up 80.7 percent of the unbanked in the state, and Black and Hispanic Californians made up 78.3 percent. Nearly half, 45.9 percent, of all Black-identifying households in California and 41.1 percent of all Hispanic-identifying households were unbanked or underbanked in 2017 compared to 15.5 percent of white-identifying households. Forty-four percent of disabled Californians in 2017 were also unbanked or underbanked.

(f) Providing Californians with a zero-fee, zero-penalty, zero-minimum-balance requirement public option for basic financial services would empower Californians by providing a stable, affordable financial platform for all Californians, especially the unbanked and underbanked who currently rely on expensive AFS transactions. The CalAccount Program would mitigate the demand for exploitative alternatives to banking services with respect to which upselling and cross-selling into expensive accounts and products is the norm. A market analysis of the proposed CalAccount Program and any modifications that may be necessary for its successful and cost-effective implementation will enhance the state’s ability to serve the financial services needs of unbanked and underbanked Californians.

(g) To the extent the state, to successfully implement the CalAccount Program, contracts with entities to provide administrative and financial services, the state has a proprietary interest in ensuring that the entities with which it contracts have not engaged in conduct that would undermine the goals, efficiency, and reputation of the CalAccount Program, including, but not limited to, by violating banking, consumer protection, fair lending, or fair housing laws.

SEC. 3. Title 21.1 (commencing with Section 100100) is added to the Government Code, to read:

TITLE 21.1. CALACCOUNT BLUE RIBBON COMMISSION

100100. As used in this title:

(a) “CalAccount Program” means the proposed program described in paragraph (1) of subdivision (a) of Section 100104.

(b) “Commission” means the CalAccount Blue Ribbon Commission convened pursuant to Section 100102.

100102. (a) On or before September 1, 2022, the Treasurer shall convene the CalAccount Blue Ribbon Commission. The commission shall be composed of all of the following members:

(1) The Treasurer or the Treasurer’s designee.

(2) The Commissioner of the Department of Financial Protection and Innovation or that person's designee.

(3) An individual with banking expertise, particularly expertise in transaction accounts and debit cards, appointed by the Senate Committee on Rules.

(4) A public banking advocate appointed by the Senate Committee on Rules.

(5) An individual with expertise in economic and racial justice and cultural competence appointed by the Speaker of the Assembly.

(6) A consumer representative or advocate with expertise in banking access and financial empowerment, including within historically unbanked and underbanked communities, appointed by the Speaker of the Assembly.

(7) An employee representative appointed by the Governor.

(8) An individual with expertise in banking or consumer financial services affiliated with an academic institution appointed by the Governor.

(9) An individual, appointed by the Governor, with banking expertise.

(b) The members of the commission shall serve at the pleasure of their appointing authority.

(c) The Treasurer shall serve as the chair of the commission.

(d) In making appointments to the commission, the appointing authorities shall take into consideration the cultural, ethnic, and geographic diversity of the state so that the commission's composition reflects the communities of California.

(e) (1) Except as provided in paragraph (2), members of the commission shall serve without compensation.

(2) Members of the commission shall be reimbursed for necessary travel expenses incurred in connection with their commission duties.

(f) (1) Except for the members described in paragraphs (3) and (9) of subdivision (a), a commission member, or Treasurer's staff working with the commission, while serving in that capacity shall not have a direct or indirect investment or ownership interest in or be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, a private bank or financial services institution unless that position is an unpaid volunteer position.

(2) The restrictions in paragraph (1) do not include ownership of a share of a diversified mutual fund or exchange-traded fund that holds shares of a private bank or financial services institution.

100104. (a) (1) On or before July 1, 2024, the commission shall conduct, pursuant to subdivision (b), and deliver, pursuant to subdivision (f), a market analysis to determine if it is feasible to implement a "CalAccount Program," which, if implemented, would have all of the following characteristics:

(A) Would be a program established by the state for the purpose of protecting consumers who lack access to traditional banking services from predatory, discriminatory, and costly alternatives, which offers Californians access to a voluntary, zero-fee, zero-penalty, federally insured transaction account, known as a CalAccount, and related payment services at no cost to accountholders, including robust and geographically diverse mechanisms

for accessing account funds and account management tools that facilitate the automation of basic financial transactions designed to serve the needs of individuals with low or fluctuating income.

(B) Would be administered by a board consisting of all of the following members:

(i) The Treasurer or the Treasurer’s designee.

(ii) The Commissioner of the Department of Financial Protection and Innovation or that person’s designee.

(iii) An individual with banking expertise, particularly expertise in transaction accounts and debit cards, appointed by the Senate Committee on Rules.

(iv) An individual with expertise in economic and racial justice and cultural competence appointed by the Speaker of the Assembly.

(v) An employee representative appointed by the Governor.

(vi) An individual with expertise in banking or consumer financial services affiliated with an academic institution appointed by the Governor.

(vii) An individual with banking expertise appointed by the Governor.

(viii) A public banking advocate appointed by the Senate Committee on Rules.

(ix) A consumer representative or advocate with expertise in banking access and financial empowerment, including within historically unbanked and underbanked communities, appointed by the Speaker of the Assembly.

(C) Would require the board to establish a process by which an individual may open a CalAccount, which process shall be designed to maximize program participation.

(D) Would require the board to establish the mechanisms by which an accountholder may deposit funds into a CalAccount for no fee, which mechanisms shall include, but not be limited to, electronic fund transfers arranged through an employer’s or hiring entity’s payroll direct deposit arrangement and cash loading through in-network partners.

(E) Would require the board to establish the process through which an accountholder may elect to have a portion, up to the entirety, of the accountholder’s paycheck or earnings due for labor or services performed directly deposited by electronic fund transfer into the accountholder’s CalAccount.

(F) Would require the board to establish the process through which employers and hiring entities shall be required to remit through a payroll direct deposit arrangement each worker’s elected payroll contribution to the worker’s CalAccount in accordance with the worker’s election.

(G) Would require the board to establish mechanisms by which an accountholder can withdraw funds from a CalAccount using a CalAccount debit card for no fee, which mechanisms shall include, but not be limited to, withdrawals through point-of-sale purchases using a CalAccount debit card and through cash withdrawals at a robust and geographically expansive network of participating ATMs, bank or credit union branches, and other in-network partners of designated financial institution partners.

(H) Would require the board to establish a process, available to all accountholders for no fee, through which an accountholder may arrange for payment to a registered payee using a preauthorized electronic fund transfer from a CalAccount.

(I) Would require the board to establish the process and terms and conditions for becoming a registered payee, which shall at a minimum require the payee's agreement to specified terms and conditions to be established by the board in exchange for the benefits of transparency and accountability afforded by participation in an automated payment system and which shall be designed to incentivize accountholders' preauthorized electronic fund transfers to registered payees and application of voluntary automatic disbursement rules by limiting the late payment fees and penalties that registered payees can impose on accountholders who pay them using preauthorized electronic fund transfers from their CalAccounts.

(J) Would require the board to establish voluntary automatic disbursement rules to assist an accountholder in managing automated payments to registered payees based on the availability of funds in the accountholder's account, which an accountholder may voluntarily elect to apply or to stop applying to the accountholder's CalAccount at any time, and which shall be designed to maximize consumer protection and may include, but not be limited to, rules governing the prioritization and timing of payments, rules limiting payments to a percentage of funds available in the CalAccount, and rules limiting disbursement to designated registered payees only upon satisfaction of specified conditions of the CalAccount.

(K) Would provide that the board, in establishing processes for enrollment in the CalAccount Program:

(i) Shall facilitate the opening of a CalAccount by individuals who may not have federal or state government-issued photo identification while taking all reasonable steps to maintain the confidentiality of personal information consistent with all applicable law.

(ii) Shall design and establish rules governing the enrollment and participation in the program of individuals who do not have permanent housing.

(iii) May design and establish rules governing the enrollment and participation in the program of individuals who are under 18 years of age, including rules governing the opening of a CalAccount by a person who is at least 14 years of age without a cosigner or guarantor on the account consistent with all applicable law.

(L) Would require the board to select a program administrator, which may consist of one or more contractors or program staff or a combination thereof, whose duties shall include, but not be limited to, all of the following:

(i) Provide a secure internet web-based portal and mobile application through which individuals can enroll in the program and entities can become registered payees and through which accountholders can access and manage their CalAccounts, including their direct deposits, preauthorized electronic fund transfers to registered payees, and automatic disbursement rule elections.

(ii) Provide a method that enables employers and hiring entities to remit each worker participant's elected direct deposit payroll contribution to the worker's CalAccount in accordance with the worker's election.

(iii) Facilitate enrollment of accountholders in the program through coordination with government, employers and hiring entities, and nonprofit partners.

(iv) Facilitate and manage connectivity with other state and local government programs providing individuals with financial accounts to enable program accountholders to transfer funds between their CalAccounts and their other state-managed or locally managed accounts, as authorized by the board and in accordance with all applicable laws and regulations.

(v) Facilitate and manage connectivity with other state and local government agencies and entities to enable and streamline remittance of local, state, and federal benefit and public assistance payments and other disbursements to accountholders who are entitled to those payments and who authorize those payments to be directly deposited by electronic fund transfer into a CalAccount, as authorized by the board and in accordance with all applicable laws and regulations.

(M) Would require the board to contract with a financial services network administrator whose duties may include, but not be limited to, all of the following:

(i) Contract with, manage, and coordinate the financial services vendors for the program, which shall provide accountholders access to their CalAccounts and services provided in concert with at least one qualifying participating depository financial institution that meets the requirements established by the board.

(ii) Add additional participating depository financial institutions meeting the requirements established by the board, especially including qualifying credit unions and other local financial institutions, as program scope and scale permits, in accordance with the board's specifications as set forth in the contract between the board and the financial services network administrator.

(iii) Issue to each accountholder a secure debit card, or other secure means of access to the accountholder's CalAccount, which shall utilize current security and antifraud technology consistent with industry standards.

(iv) Provide a robust and geographically expansive financial services network of partners through which an accountholder can load or withdraw funds from a CalAccount using a CalAccount debit card, or other secure means of access to a CalAccount, for no fee, including ATMs, bank or credit union branches, and other in-network partners, minimize or eliminate out-of-network fees for accountholders, and ensure that accountholders are not charged out-of-network fees that are not reasonable and actually incurred by the program vendor.

(N) Would require the board to develop and negotiate a fair and equitable program fee and program revenue sharing structure between the state and the financial services network administrator in furtherance of attaining a

financially self-sustaining program, which agreement shall be reevaluated annually and renegotiated as appropriate based on program scope and scale.

(O) Would require an employer with more than 25 employees and a hiring entity with more than 25 independent contractors performing the same or similar labor or service, excluding the federal government, to do all of the following:

(i) Have and maintain a payroll direct deposit arrangement that enables voluntary worker participation in the program.

(ii) Deposit all wages and other payments due a worker that the worker has authorized to be directly deposited by electronic fund transfer into the worker's CalAccount in accordance with the worker's authorization.

(iii) Coordinate its payroll process with the program administrator's application program interface to facilitate accurate and seamless payment by direct deposit in accordance with the authorization of each worker participant.

(iv) Cooperate with the program administrator in providing all requested information available to the employer or hiring entity necessary for the opening and administration of a worker's CalAccount.

(v) Upon request of the administrator, provide additional forms or notifications to a worker.

(vi) Refrain from discharging, disciplining, threatening to discharge or discipline, or in any other manner retaliating or taking an adverse action against a worker or applicant because of the individual's participation or manner of participation in the CalAccount Program.

(P) Would require a landlord or a landlord's agent to allow a tenant to pay rent and deposit of security by an electronic funds transfer from a CalAccount, except as provided in paragraph (2) of subdivision (a) of Section 1947.3 of the Civil Code, and would provide that a landlord's, or a landlord's agent's, receipt of payment from a CalAccount pursuant to the requirements of the CalAccount Program shall not be considered a waiver of any right the landlord or landlord's agent may otherwise have to establish the base rent on, or to raise rent for, the rental unit.

(2) If it is not feasible to implement the CalAccount Program, as described in paragraph (1), the market analysis required by this subdivision shall also include whether there are modifications to the CalAccount Program that can ease the implementation burdens.

(3) (A) The market analysis required by this subdivision shall also include whether or not CalAccount Program revenue is more likely than not to be sufficient to pay for CalAccount Program costs within six years of the CalAccount Program's implementation.

(B) The analysis required by this paragraph shall include detailed financial projections and key assumptions upon which the determination required by this paragraph relies.

(4) The market analysis required by this subdivision shall also include an analysis of the population of California residents who are unbanked and the reasons they are unbanked.

(5) The market analysis required by this subdivision shall also include an analysis of the low-cost or no-cost options of federally insured transaction accounts that are available or marketed to unbanked California residents.

(6) The market analysis required by this subdivision shall also include an evaluation of all of the following:

(A) Alternatives to the CalAccount Program that the state could implement or enact that would accomplish the essential policy objectives, as described in subparagraph (A) of paragraph (1), of the CalAccount Program.

(B) The estimated risks and costs of alternatives evaluated pursuant to subparagraph (A).

(C) The expected effectiveness and scalability of alternatives evaluated pursuant to subparagraph (A).

(7) The market analysis required by this subdivision shall also include recommendations for how the state can maximize the number of unbanked California residents who become banked at the lowest cost and risk to the state.

(8) The market analysis required by this subdivision shall also include an analysis of relative advantages and disadvantages, compared to private sector alternatives, that the state may have in identifying, reaching, or persuading unbanked California residents to enroll in a state-administered banking program.

(9) The market analysis required by this subdivision shall also include recommendations related to the appropriate governance structure for a public-private partnership such as the CalAccount Program.

(10) The market analysis required by this subdivision shall also include an analysis of costs, benefits, and impacts on all affected parties, including, but not limited to, landlords, employers, state government, low-wage workers, and consumers.

(b) (1) The commission shall contract with one or more independent entities with the appropriate expertise to conduct the market analysis required by subdivision (a).

(2) A contract entered into pursuant to this subdivision shall require any entity conducting the market analysis to provide progress reports to, and receive feedback from, the commission at regular intervals or by request and be available to provide testimony and answer questions at any legislative hearings held within 12 months of the delivery of the market analysis to the Legislature.

(c) The market analysis required by subdivision (a) shall consider all of the following:

(1) The number of potential accountholders.

(2) The availability of qualified participating depository financial institutions.

(3) Potential accountholders' comfort with various banking products.

(4) How individuals without federal or state photo identification can participate.

(5) Potential CalAccount Program revenue streams.

(6) The presence and effectiveness of private sector or nonprofit competitors to the CalAccount Program.

(7) State fiscal risk from the CalAccount Program during economic downturns or economic shocks.

(8) Any other factor the commission deems relevant to making the feasibility determination pursuant to paragraph (1) of subdivision (a).

(9) The risks and costs of the CalAccount Program.

(10) The expected effectiveness and scalability of the CalAccount Program.

(11) The likely impact of the CalAccount Program on existing California depository institutions.

(12) (A) The existence of possible financial services network administrators.

(B) If any possibilities include an out-of-state entity, the anticipated impact on California consumers, businesses, and financial institutions and how an out-of-state financial services network administrator could or should be regulated.

(d) (1) Within 12 months of entering into a contract for the market analysis required by subdivision (a), the commission shall hold at least one public hearing to solicit input from members of the public.

(2) A hearing, including input from members of the public, held pursuant to this subdivision shall be recorded and made available on the Treasurer's internet website consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(e) (1) The commission shall hold a public hearing to review the market analysis.

(2) After the public hearing required by paragraph (1), the commission may issue a report to accompany the market analysis. The report may include the commission's assessment of the market analysis, feedback from the public hearing held pursuant to paragraph (1), and recommendations related to the implementation of the CalAccount Program.

(3) The commission shall make a determination as to whether the CalAccount Program can be implemented as described in paragraph (1) of subdivision (a) and, if not, what modifications to the CalAccount Program could be made to implement it.

(4) The commission shall make a determination as to whether CalAccount Program revenue is more likely than not to be sufficient to pay for CalAccount Program costs within six years of the CalAccount Program's implementation and what the state's investment will need to be in order to cover the costs. If the revenue does not cover the costs, the commission shall make a recommendation as to whether the CalAccount Program should be implemented nonetheless.

(f) The commission shall deliver, and upon request present, the market analysis and any report issued pursuant to paragraph (2) of subdivision (e) to the Chair of the Senate Committee on Banking and Financial Institutions and the Chair of the Assembly Committee on Banking and Finance.

100106. This title shall become operative only upon an appropriation by the Legislature in the Budget Act or another statute for the purpose of implementing this title.

100108. This title shall remain in effect until January 1, 2032, and as of that date is repealed.

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