CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 5826**

64th Legislature

2015 Regular Session

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| Passed by the Senate April 21, 2015  Yeas 27 Nays 22  **President of the Senate**  Passed by the House April 10, 2015  Yeas 57 Nays 40  **Speaker of the House of Representatives** | CERTIFICATE  I, Pablo G. Campos, Deputy Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5826** as passed by Senate and the House of Representatives on the dates hereon set forth.  **Chief Clerk** |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED SUBSTITUTE SENATE BILL 5826**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2015 Regular Session

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Mullet and Benton)

AN ACT Relating to creating the Washington small business retirement marketplace; adding new sections to chapter 43.330 RCW; adding a new section to chapter 43.320 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that there is a retirement savings access gap in Washington; that Americans reach the median salary four years later than they did in 1980 and therefore have four fewer years of savings opportunities; and that one in six Americans retire in poverty. Employees who are unable to effectively build their retirement savings risk living on low incomes in their elderly years and are more likely to become dependent on state services. Further, small businesses, which employ more than forty percent of private sector employees in Washington, often choose not to offer retirement plans to employees due to concerns about costs, administrative burdens, and potential liability that they believe such plans would place on their business. In response, the legislature recognizes the work of the federal government in addressing these issues by establishing the myRA program: A safe, affordable, and accessible retirement vehicle designed to remove barriers to retirement savings. In addition, the legislature recognizes that many private financial services firms in Washington currently offer high quality retirement options for small businesses and their employees.

The Washington small business retirement marketplace will remove barriers to entry into the retirement market for small businesses by educating small employers on plan availability and promoting, without mandated participation, qualified, low-cost, low-burden retirement savings vehicles and myRA. The marketplace furthers greater retirement plan access for the residents of Washington while ensuring that individuals participating in these retirement plans will have all the protections offered by the employee retirement income security act. Further, the Washington small business retirement marketplace will not pose any significant financial burden upon taxpayers. The Washington small business retirement marketplace will be the best way for Washington to close the retirement savings access gap, protect the fiscal stability of the state and its citizens well into the future, and further cement its place as a national leader in retirement and investor promotion and protection. The marketplace will educate and promote retirement saving among employees and in particular market to small employers with fifty or fewer employees.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Approved plans" means retirement plans offered by private sector financial services firms that meet the requirements of this chapter to participate in the marketplace.

(2) "Balanced fund" means a mutual fund that has an investment mandate to balance its portfolio holdings. The fund generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.

(3) "Eligible employer" means a self-employed individual, sole proprietor, or an employer with fewer than one hundred qualified employees at the time of enrollment.

(4) "Enrollee" means any employee who is voluntarily enrolled in an approved plan offered by an eligible employer through the Washington small business retirement marketplace.

(5) "myRA" means the myRA retirement program administered by the United States department of the treasury that is available to all employers and employees with no fees or no minimum contribution requirements. A myRA is a Roth IRA option and investments in these accounts are backed by the United States department of the treasury.

(6) "Participating employer" means any eligible employer with employees enrolled in an approved plan offered through the Washington small business retirement marketplace who chooses to participate in the marketplace and offers approved plans to employees for voluntary enrollment.

(7) "Private sector financial services firms" or "financial services firms" mean persons or entities licensed or holding a certificate of authority and in good standing by either the department of financial institutions or the office of the insurance commissioner and meeting all federal laws and regulations to offer retirement plans.

(8) "Qualified employee" means those workers who are defined by the federal internal revenue service to be eligible to participate in a specific qualified plan.

(9) "Target date or other similar fund" means a hybrid mutual fund that automatically resets the asset mix of stocks, bonds, and cash equivalents in its portfolio according to a selected time frame that is appropriate for a particular investor. A target date is structured to address a projected retirement date.

(10) "Washington small business retirement marketplace" or "marketplace" means the retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings.

NEW SECTION. **Sec.**  (1) The Washington small business retirement marketplace is created.

(2) Prior to connecting any eligible employer with an approved plan in the marketplace, the director shall design a plan for the operation of the marketplace.

(3) The director shall consult with the Washington state department of retirement systems, the Washington state investment board, and the department of financial institutions in designing and managing the marketplace.

(4) The director shall approve for participation in the marketplace all private sector financial services firms that meet the requirements of section 2(7) of this act.

(5) A range of investment options must be provided to meet the needs of investors with various levels of risk tolerance and various ages. The director must approve a diverse array of private retirement plan options that are available to employers on a voluntary basis, including life insurance plans that are designed for retirement purposes, and at least two types of plans for eligible employer participation: (a) A SIMPLE IRA-type plan that provides for employer contributions to participating enrollee accounts; and (b) a payroll deduction individual retirement account type plan or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' account.

(6) Prior to approving a plan to be offered on the marketplace, the department must receive verification from the department of financial institutions and the office of the insurance commissioner (a) that the private sector financial services firm offering the plan meets the requirements of section 2(7) of this act; and (b) that the plan meets the requirements of this section excluding subsection (9) of this section which is subject to federal laws and regulations. The director may remove approved plans that no longer meet the requirements of this chapter.

(7) The financial services firms participating in the marketplace must offer a minimum of two product options: (a) A target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement and (b) a balanced fund. The marketplace must offer myRA.

(8) In order for the marketplace to operate, there must be at least two financial services firms offering approved plans on the marketplace; however, nothing in this subsection shall be construed to limit the number of private sector financial services firms with approved plans from participating in the marketplace.

(9) Approved plans must meet federal law or regulation for internal revenue service approved retirement plans.

(10) The approved plans must include the option for enrollees to roll pretax contributions into a different individual retirement account or another eligible retirement plan after ceasing participation in a plan approved by the Washington small business retirement marketplace.

(11) Financial services firms selected by the department to offer approved plans on the marketplace may not charge the participating employer an administrative fee and may not charge enrollees more than one hundred basis points in total annual fees and must provide information about their product's historical investment performance.

(12) Participation in the Washington small business retirement marketplace is voluntary for both eligible employers and qualified employees.

(13) Enrollment in any approved plan offered in the marketplace is not an entitlement.

NEW SECTION. **Sec.**  (1) The director shall contract with a private sector entity to:

(a) Establish a protocol for reviewing and approving the qualifications of all private sector financial services firms that meet the qualifications to participate in the marketplace;

(b) Design and operate an internet web site that includes information about how eligible employers can voluntarily participate in the marketplace;

(c) Develop marketing materials about the marketplace that can be distributed electronically, posted on agency web sites that interact with eligible employers, or inserted into mail from the department of revenue, department of labor and industries, employment security department, the office of minority and women's business enterprises, department of licensing, and secretary of state's division of corporations;

(d) Identify and promote existing federal and state tax credits and benefits for employers and employees that are related to encouraging retirement savings or participating in retirement plans; and

(e) Promote the benefits of retirement savings and other information that promotes financial literacy.

(2) The director shall address how rollovers are handled for eligible Washington employers that have workers in other states, and whether out-of-state employees with existing IRA's can roll them into the plans offered through the Washington small business retirement marketplace.

(3) The director shall direct the entity retained pursuant to subsection (1) of this section to assure that licensed professionals who assist their eligible business clients or employees to enroll in a plan offered through the Washington small business retirement marketplace may receive routine, market-based commissions or other compensation for their services.

(4) The director shall ensure by rule that there is objective criteria in the protocol provided in subsection (1)(a) of this section and that the protocol does not provide unfair advantage to the private sector entity which establishes the protocol.

(5) The director shall encourage the participation of private sector financial services firms in the marketplace.

NEW SECTION. **Sec.**  In addition to any appropriated funds, the director may use private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the department shall seek federal and private grants and is authorized to accept any funds awarded to the department for use in the marketplace.

NEW SECTION. **Sec.**  The department shall not expose the state of Washington as an employer or through administration of the marketplace to any potential liability under the federal employee retirement income act of 1974. As such, the department is specifically prohibited from offering and operating a state-based retirement plan for businesses or individuals who are not employed by the state of Washington.

NEW SECTION. **Sec.**  Using funds specifically appropriated for this purpose, and funds provided by private foundations or other private sector entities, the director may provide incentive payments to participating employers that enroll in the marketplace.

NEW SECTION. **Sec.**  The director shall report biennially to the legislature on the effectiveness and efficiency of the Washington small business retirement marketplace, including the levels of enrollment and the retirement savings levels of participating enrollees that are obtained in aggregate on a voluntary basis from private sector financial services firms that participate in the marketplace.

NEW SECTION. **Sec.**  The director shall adopt rules necessary to allow the marketplace to operate as authorized by this subchapter. As part of the rule development process, the director shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, organizations representing private sector financial services firms, and any other individuals or entities that the director determines relevant to the development of an effective and efficient method for operating the marketplace. The rules must be proposed by January 1st of the year of implementation and rules shall not be adopted until after the end of the regular legislative session of that year.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

The department of financial institutions, annually, or upon request of the department of commerce, must review individual retirement account products proposed for inclusion in the Washington small business retirement marketplace to confirm that the products comply with the requirements of section 3 of this act, except for those requirements that pertain to federal laws and regulations.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act are each added to chapter 43.330 RCW and codified with the subchapter heading of "Washington small business retirement marketplace."

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