

ESSB 5826 - H COMM AMD

By Committee on Appropriations

ADOPTED AS AMENDED 4/10/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that there is a
4 retirement savings access gap in Washington; that Americans reach the
5 median salary four years later than they did in 1980 and therefore
6 have four fewer years of savings opportunities; and that one in six
7 Americans retire in poverty. Employees who are unable to effectively
8 build their retirement savings risk living on low incomes in their
9 elderly years and are more likely to become dependent on state
10 services. Further, small businesses, which employ more than forty
11 percent of private sector employees in Washington, often choose not
12 to offer retirement plans to employees due to concerns about costs,
13 administrative burdens, and potential liability that they believe
14 such plans would place on their business. In response, the
15 legislature recognizes the work of the federal government in
16 addressing these issues by establishing the myRA program: A safe,
17 affordable, and accessible retirement vehicle designed to remove
18 barriers to retirement savings. In addition, the legislature
19 recognizes that many private financial services firms in Washington
20 currently offer high quality retirement options for small businesses
21 and their employees.

22 The Washington small business retirement marketplace will remove
23 barriers to entry into the retirement market for small businesses by
24 educating small employers on plan availability and promoting, without
25 mandated participation, qualified, low-cost, low-burden retirement
26 savings vehicles and myRA. The marketplace furthers greater
27 retirement plan access for the residents of Washington while ensuring
28 that individuals participating in these retirement plans will have
29 all the protections offered by the employee retirement income
30 security act. Further, the Washington small business retirement
31 marketplace will not pose any significant financial burden upon
32 taxpayers. The Washington small business retirement marketplace will
33 be the best way for Washington to close the retirement savings access

1 gap, protect the fiscal stability of the state and its citizens well
2 into the future, and further cement its place as a national leader in
3 retirement and investor promotion and protection. The marketplace
4 will educate and promote retirement saving among employees and in
5 particular market to small employers with fifty or fewer employees.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this subchapter unless the context clearly requires
8 otherwise.

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

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

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

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 3.** (1) The Washington small business
11 retirement marketplace is created.

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

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

19 (4) The director shall approve for participation in the
20 marketplace all private sector financial services firms that meet the
21 qualifications of this section and section 10 of this act. The
22 director may remove approved plans that no longer meet the
23 requirements of this chapter.

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

35 (6) Prior to approving a plan to be offered on the marketplace,
36 the department must receive verification from the department of
37 financial institutions and the office of the insurance commissioner
38 pursuant to section 2(7) of this act that each plan meets the
39 requirements of this section.

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 4.** (1) The director shall contract with a
28 private sector entity to:

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

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

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

1 department of licensing, and secretary of state's division of
2 corporations;

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

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

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

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

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

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

26 NEW SECTION. **Sec. 5.** In addition to any appropriated funds, the
27 director may use private funding sources, including private
28 foundation grants, to pay for marketplace expenses. On behalf of the
29 marketplace, the department shall seek federal and private grants and
30 is authorized to accept any funds awarded to the department for use
31 in the marketplace.

32 NEW SECTION. **Sec. 6.** The department shall not expose the state
33 of Washington as an employer or through administration of the
34 marketplace to any potential liability under the federal employee
35 retirement income act of 1974. As such, the department is
36 specifically prohibited from offering and operating a state-based
37 retirement plan for businesses or individuals who are not employed by
38 the state of Washington.

1 NEW SECTION. **Sec. 7.** Using funds specifically appropriated for
2 this purpose, and funds provided by private foundations or other
3 private sector entities, the director may provide incentive payments
4 to participating employers that enroll in the marketplace.

5 NEW SECTION. **Sec. 8.** The director shall report biennially to
6 the legislature on the effectiveness and efficiency of the Washington
7 small business retirement marketplace, including the levels of
8 enrollment and the retirement savings levels of participating
9 enrollees that are obtained in aggregate on a voluntary basis from
10 private sector financial services firms that participate in the
11 marketplace.

12 NEW SECTION. **Sec. 9.** The director shall adopt rules necessary
13 to allow the marketplace to operate as authorized by this subchapter.
14 As part of the rule development process, the director shall consult
15 with organizations representing eligible employers, qualified
16 employees, private and nonprofit sector retirement plan
17 administrators and providers, organizations representing private
18 sector financial services firms, and any other individuals or
19 entities that the director determines relevant to the development of
20 an effective and efficient method for operating the marketplace. The
21 rules must be proposed by January 1st of the year of implementation
22 and rules shall not be adopted until after the end of the regular
23 legislative session of that year.

24 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.320
25 RCW to read as follows:

26 The department of financial institutions, annually, or upon
27 request of the department of commerce, must review individual
28 retirement account products proposed for inclusion in the Washington
29 small business retirement marketplace to confirm that the products
30 comply with the requirements of section 3 of this act.

31 NEW SECTION. **Sec. 11.** If any part of this act is found to be in
32 conflict with federal requirements that are a prescribed condition to
33 the allocation of federal funds to the state, the conflicting part of
34 this act is inoperative solely to the extent of the conflict and with
35 respect to the agencies directly affected, and this finding does not
36 affect the operation of the remainder of this act in its application

1 to the agencies concerned. Rules adopted under this act must meet
2 federal requirements that are a necessary condition to the receipt of
3 federal funds by the state.

4 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act are each
5 added to chapter 43.330 RCW and codified with the subchapter heading
6 of "Washington small business retirement marketplace."

7 Correct the title.

EFFECT: Removes restrictions on supporting the operation of the Washington Small Business Retirement Marketplace (Marketplace) with only private and federal funds, and adds references to the use of state funds appropriated for the Marketplace. Permits funds specifically appropriated for the purpose to be used for incentive payments for employers to enroll in the Marketplace.

Removes the requirement that the Marketplace be created subject to the availability of federal or private funding.

Creates a definition of "approved plans" to mean retirement plans offered by private sector financial services firms that meet the requirements to participate in the Marketplace, and requires the Director of the Department of Commerce (Department) approve all firms and plans that meet those requirements for participation in the Marketplace.

Requires that the development of a protocol for the qualifications of private sector financial services firms that seek to participate in the Marketplace be done through a contract with a private entity, rather than by the Department, with rules adopted by the Department to ensure the protocol does not provide unfair advantage to the entity that establishes the protocol.

Removes an unused definition for "qualified default investment alternative" and clarifies the definition of "eligible employer."

Requires the Department of Financial Institutions to annually, or upon request of the Department, review retirement account products for eligibility for inclusion in the Marketplace.

Adds that state funds may be used to provide incentive payments to participating employers that enroll in the Marketplace.

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