

SSB 5826 - S AMD 280

By Senators Mullet, Braun

ADOPTED 3/11/2015

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 is the most  
23 effective, efficient, and sustainable way to promote increased  
24 retirement savings in the state of Washington. The Washington small  
25 business retirement marketplace will remove barriers to entry into  
26 the retirement market for small businesses by educating small  
27 employers on plan availability and promoting, without mandated  
28 participation, qualified, low-cost, low-burden retirement savings  
29 vehicles and myRA. The marketplace furthers greater retirement plan  
30 access for the residents of Washington while ensuring that  
31 individuals participating in these retirement plans will have all the  
32 protections offered by the employee retirement income security act.  
33 Further, the Washington small business retirement marketplace will

1 not pose any significant financial burden upon taxpayers. The  
2 Washington small business retirement marketplace will be the best way  
3 for Washington to close the retirement savings access gap, protect  
4 the fiscal stability of the state and its citizens well into the  
5 future, and further cement its place as a national leader in  
6 retirement and investor promotion and protection.

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

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

14 (2) "Eligible employer" means a person engaged in a business, an  
15 industry, a profession, a trade, or any other entity that is  
16 registered with the Washington state department of revenue, and  
17 satisfies the requirements to participate in the Washington small  
18 business retirement marketplace.

19 (3) "Enrollee" means any employee who is enrolled in an  
20 individual retirement account offered by an eligible employer through  
21 the Washington small business retirement marketplace.

22 (4) "myRA" means the myRA retirement program administered by the  
23 United States department of 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 treasury.

27 (5) "Participating employer" means any eligible employer with  
28 employees enrolled in individual retirement accounts offered through  
29 the Washington small business retirement marketplace.

30 (6) "Qualified default investment alternative" means types of  
31 investments identified by the federal internal revenue service for  
32 employees who do not make an investment choice or are automatically  
33 enrolled in a retirement plan.

34 (7) "Qualified employee" means those workers who are defined by  
35 the federal internal revenue service to be eligible to participate in  
36 a specific retirement plan.

37 (8) "Qualifying plans" means retirement plan options offered by  
38 private sector financial services firms that meet the requirements of  
39 this subchapter to participate in the marketplace, and myRA.

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

10 NEW SECTION. **Sec. 3.** (1)(a) Subject to the availability of  
11 funds under (b) of this subsection, the Washington small business  
12 retirement marketplace is created. The director shall contract with a  
13 private sector entity to establish a program that connects eligible  
14 employers with qualifying plans. The contractor shall not include any  
15 person regulated under chapter 21.20 or 48.23 RCW or who has a  
16 financial interest in any plan offered in the marketplace. The  
17 program must: (i) Establish a protocol for reviewing and approving  
18 the qualifications of private sector financial services firms that  
19 seek to participate in the marketplace; (ii) design and operate an  
20 internet web site that includes information about how eligible  
21 employers can participate in the marketplace; (iii) develop marketing  
22 materials about the marketplace that can be distributed  
23 electronically, posted on agency web sites that interact with  
24 eligible employers, or inserted into mail from the department of  
25 revenue, department of labor and industries, employment security  
26 department, the office of minority and women's business enterprises,  
27 department of licensing, and secretary of state's division of  
28 corporations; (iv) identify and promote existing federal and state  
29 tax credits and benefits for employers and employees that are related  
30 to encouraging retirement savings or participating in retirement  
31 plans; and (v) promote the benefits of retirement savings and other  
32 information that promotes financial literacy. The director may  
33 consult with the Washington state department of retirement systems,  
34 the Washington state investment board, and the department of  
35 financial institutions in designing and managing the marketplace.

36 (b) The department may use only federal or private funding  
37 sources, including private foundation grants, to pay for marketplace  
38 expenses. On behalf of the marketplace, the department shall seek  
39 federal and private grants and is authorized to accept any funds

1 awarded to the department for use in the marketplace. No new state  
2 funds may be expended for the purposes of the Washington small  
3 business retirement marketplace.

4 (2)(a) Only self-employed individuals, sole proprietors, and  
5 employers with fewer than one hundred qualified employees at the time  
6 of enrollment, are eligible to participate in the marketplace. Prior  
7 to connecting any eligible employer with a qualifying plan in the  
8 marketplace, the director shall design a plan for the operation of  
9 the marketplace. The marketplace must approve at least three types of  
10 plans for eligible employer participation: (i) A SIMPLE IRA-type  
11 target date or other similar fund, with asset allocations and  
12 maturities designed to coincide with the expected date of retirement;  
13 (ii) a SIMPLE IRA-type balanced fund; and (iii) myRA.

14 (b) The marketplace may offer a minimum of two product options  
15 for the target date or other similar fund and a minimum of two  
16 product options for the balanced fund. The options must include: (i)  
17 A SIMPLE IRA-type program or other internal revenue service approved  
18 employer plan that provides for employer contributions to  
19 participating enrollee accounts; and (ii) a payroll deduction  
20 individual retirement account type program or workplace-based  
21 individual retirement accounts open to all workers in which the  
22 employer does not contribute to the employees' accounts.

23 (c) The products must meet federal law or regulation for the  
24 plans. 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 shall select the product options offered on the  
27 marketplace and may add or remove product options to best meet the  
28 needs of enrollees.

29 (d) The director shall approve a plan for the structure and  
30 operation of the marketplace based on recommendations of the entity  
31 retained pursuant to subsection (1) of this section.

32 (e) The plans and accounts must include the option for enrollees  
33 to roll pretax contributions into a different individual retirement  
34 account or another eligible retirement plan after ceasing  
35 participation in a plan approved by the Washington small business  
36 retirement marketplace.

37 NEW SECTION. **Sec. 4.** (1) Participation in the Washington small  
38 business retirement marketplace is completely voluntary.

1 (2) Qualifying plans selected by the department to offer products  
2 on the marketplace may not charge enrollees more than one hundred  
3 basis points in total annual fees, and must provide information about  
4 their plan's historical investment performance. Prior to approving a  
5 product to be offered on the marketplace, the department must receive  
6 verification from the department of financial institutions pursuant  
7 to section 9 of this act that each qualifying plan meets the  
8 requirements of this section.

9 (3) Enrollment in any plan offered in the marketplace is not an  
10 entitlement and the legislature may modify or terminate the  
11 marketplace and the products offered.

12 NEW SECTION. **Sec. 5.** The director shall consult with  
13 organizations representing private sector employers, private sector  
14 employees, private and nonprofit sector retirement plan  
15 administrators and providers, and any other individuals or entities  
16 that the director determines relevant to the development of an  
17 effective and efficient method for operating the marketplace.

18 NEW SECTION. **Sec. 6.** The department shall not expose the state  
19 of Washington as an employer or through administration of the  
20 marketplace to any potential liability under the federal employee  
21 retirement income act of 1974. As such, the department is  
22 specifically prohibited from offering and operating a state-based  
23 retirement plan for businesses or individuals who are not employed in  
24 the state of Washington.

25 NEW SECTION. **Sec. 7.** Using funds provided by private  
26 foundations or other private sector entities, the director may  
27 provide incentive payments to participating employers that enroll in  
28 the marketplace and referral payments or commissions to any person  
29 licensed to sell securities under chapter 21.20 RCW or life insurance  
30 or annuities under chapter 48.23 RCW who enrolls a qualifying  
31 employer in a plan offered by the marketplace.

32 NEW SECTION. **Sec. 8.** The director shall report biennially to  
33 the legislature on the effectiveness and efficiency of the Washington  
34 small business retirement marketplace, including the levels of  
35 enrollment and the retirement savings levels of participating  
36 enrollees.

1        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 43.320  
2 RCW to read as follows:

3        The department, upon request of the department of commerce, must  
4 review individual retirement account products proposed for inclusion  
5 in the Washington small business retirement marketplace to confirm  
6 that the products comply with the requirements of section 4 of this  
7 act.

8        NEW SECTION.    **Sec. 10.**    If any part of this act is found to be in  
9 conflict with federal requirements that are a prescribed condition to  
10 the allocation of federal funds to the state, the conflicting part of  
11 this act is inoperative solely to the extent of the conflict and with  
12 respect to the agencies directly affected, and this finding does not  
13 affect the operation of the remainder of this act in its application  
14 to the agencies concerned. Rules adopted under this act must meet  
15 federal requirements that are a necessary condition to the receipt of  
16 federal funds by the state.

17        NEW SECTION.    **Sec. 11.**    Sections 1 through 8 of this act are each  
18 added to chapter 43.330 RCW and codified with the subchapter heading  
19 of "Washington small business retirement marketplace."

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By Senators Mullet, Braun

**ADOPTED 3/11/2015**

20        On page 1, line 2 of the title, after "marketplace;" strike the  
21 remainder of the title and insert "adding new sections to chapter  
22 43.330 RCW; adding a new section to chapter 43.320 RCW; and creating  
23 a new section."

EFFECT: Excludes persons regulated under the Securities Act or Life Insurance and Annuities Act from being the contractor to establish the marketplace program; removes the Director's rule-making authority; and allows for referral payments and commissions to be paid to persons licensed under the Securities Act or Life Insurance and Annuities Act for enrolling employers in a marketplace plan.

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