

SENATE BILL REPORT

ESSB 5826

As Amended by House, April 10, 2015

Title: An act relating to creating the Washington small business retirement marketplace.

Brief Description: Creating the Washington small business retirement marketplace.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Mullet and Benton).

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/11/15, 2/18/15 [DP-WM].

Ways & Means: 2/26/15, 2/27/15 [DPS, DNP, w/oRec].

Passed Senate: 3/11/15, 29-20.

Passed House: 4/10/15, 57-40.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Benton, Chair; Angel, Vice Chair; Mullet, Ranking Minority Member; Darneille, Fain, Hobbs, Pedersen and Roach.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5826 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Conway, Fraser, Hasegawa, Hatfield, Kohl-Welles, Rolfes and Warnick.

Minority Report: Do not pass.

Signed by Senators Brown, Hewitt, Padden and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, O'Ban and Parlette.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Julie Murray (786-7711)

Background: Some private sector employers provide their employees with retirement benefits, such as 401(k) plans, while other employers may provide no retirement benefits to their employees. Some small business employers may not offer the retirement plans due to concerns about costs, administrative burdens, and potential liability.

Private sector employers offering retirement plans to their employees must comply with the Employee Retirement Income Security Act (ERISA). In order to qualify for tax benefits available for both employers and employees, employers must maintain adequate record keeping, fairness, and funding in their retirement plans as specified by ERISA.

Private sector employees participate in Social Security, and also have federally regulated personal retirement investment options such as the Individual Retirement Account (IRA), the Payroll Deduction IRA; myRA, a Roth-IRA; and the SIMPLE IRA plans, a retirement plan for small employers allowing employer contributions. Banks, investment firms, and financial planners advise and assist individuals in planning and investing for retirement.

Summary of Engrossed Substitute Bill: Creation. The Washington small business retirement marketplace (marketplace) is created in the Department of Commerce (Commerce). The director of Commerce (director) must contract with a private sector entity to establish a program that connects eligible employers with qualifying plans. The private sector entity contractor may not be a person regulated under the Securities Act or Life Insurance and Annuities Act or who has a financial interest in any plan offered in the marketplace. The program must:

- establish a protocol for reviewing and approving the qualifications of private sector financial services firms seeking to participate in the marketplace;
- design and operate an internet website that includes information about how eligible employers can participate in the marketplace;
- develop marketing materials about the marketplace that can be distributed electronically, posted on various agency websites, or inserted in agency mailers;
- 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
- promote the benefits of retirement savings and financial literacy.

Only self-employed individuals, sole proprietors, and employers with fewer than 100 qualified employees are eligible to participate in the marketplace. Participation in the marketplace is completely voluntary.

Three Types of Plans. The marketplace must approve at least three types of plans for eligible employer participation: (1) A SIMPLE IRA-type target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement; (2) a SIMPLE IRA-type balanced fund; and (3) myRA.

Product Options. The marketplace may offer a minimum of two product options for the target date or other similar fund and a minimum of two product options for the balanced fund. The options must include (1) A SIMPLE IRA-type program or other Internal Revenue

Service-approved employer plan that provides for employer contributions to participating enrollee accounts; and (2) a payroll deduction individual retirement account type program or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' accounts. The director selects the product options offered on the marketplace and may add or remove product options to best meet the needs of enrollees. The products must meet federal law or regulation for the plans.

Fees. Qualifying plans may not charge enrollees more than 100 basis points in total annual fees, and must provide information about their plan's historical investment performance.

Reporting. The director reports biennially to the Legislature on the effectiveness and efficiency of the marketplace, including the levels of enrollment and the retirement savings levels of participating enrollees.

Funding. Commerce may use only private funding sources, including private foundation grants, to pay for marketplace expenses and to provide incentive payments to participating employers that enroll in the marketplace and 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. On behalf of the marketplace, Commerce must seek federal and private grants and is authorized to accept any funds awarded to Commerce for use in the marketplace. No new state funds may be expended for the purposes of the marketplace.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Financial Institutions & Insurance): PRO: The state has a vested interest in having citizens with private retirement funds. Even modest private retirement income saves the state a lot of money. Several states have legislation and pending legislation. A number of others are working on similar legislation. Secure retirement is out of reach for many Washington residents. Social security is not enough to ensure retirees can live independently. By 2030 one in five Washington residents will be over 65. Roughly 462,000 Washington residents ages 45–64 have less than \$25,000 saved. Seventy-seven percent of employers with fewer than 100 workers do not have retirement plans. Thirty-eight million workers have no retirement savings. This is a common-sense solution to this problem. The bill allows small business to offer simple and cost-effective retirement plans. People save more when they have a workplace retirement plan. This still allows the financial services industry to be the vendors. Auto enrollment would be an improvement to the bill. The myRA is a straightforward nationwide program, which gives a capital preservation option. This bill allows the state to help connect people with the financial industry to provide retirement plans. It is important that this is a voluntary program. Commission structures and proper compensation may be an issue that needs addressing.

OTHER: There are concerns. The key benefit of the bill is financial education. Financial education needs to be in K–12 schools. There is no need for a new set of marketplaces for retirement. The state should not be in competition with small financial institutions and other advisers. This will muddy up the market. The options are a problem. Moving from a SIMPLE plan to another workplace plan is a problem. The myRA's performance is very low.

Persons Testifying (Financial Institutions & Insurance): PRO: Senator Mullet, prime sponsor; Mary Clogston, Cathy MacCaul, American Assn. of Retired Persons WA; Bill Stauffacher, Securities Industry and Financial Market Assn; Mel Sorensen, American Council of Life Insurers, National Assn. of Insurance and Financial Advisers.

OTHER: Gary Smith, Independent Business Assn.

Staff Summary of Public Testimony on Original Bill (Ways & Means): PRO: Similar programs have been launched in other states very successfully. The bill puts the state in the position of connecting employers to low-cost opportunities for retirement savings plans. It creates more options for employers seeking a retirement benefit for their employees or for employees who have no employer-provided option. We appreciate the open architecture of the legislation that does not favor one qualifying plan provider over another. If people don't save, they seek more public assistance after retirement. Some small businesses do not have the wherewithal to navigate all the retirement options that are available.

OTHER: We are concerned with how the program administrator will be selected. We are concerned that the department will develop the program by rulemaking. This is like the Affordable Care Act where rulemaking was given to an agency to develop a concept. Even the President didn't like the outcome.

Persons Testifying (Ways & Means): PRO: Cathy MacCaul, American Assn. of Retired Persons WA, Advocacy Director; Erik Strom, Russell Investments; Bill Stauffacher, Securities Industry and Financial Markets Assn.

OTHER: Gary Smith, Independent Business Assn.

House Amendment(s): The House Amendments provides that:

- Approved plans must offer a minimum of two types of products, target date and balanced funds, and may include life insurance plans designed for retirement purposes;
- The marketplace must offer the myRA product;
- At least two firms must be participating but all qualifying financial services firms, those licensed and holding a certificate of authority and in good standing with the Department of Financial Institutions and the Office of the Insurance Commissioner, must be approved and participation encouraged by Commerce;
- IRA rollovers must be addressed for out-of-state workers;
- Financial services firms may not charge the participating employer an administrative fee;
- Restrictions are removed on supporting the marketplace operations and incentive payments with only private and federal funds and allows the use of appropriated state funds;
- Commissions may be paid to licensed professionals who enroll employers;

- Rules must be proposed by January 1 of an implementation year and adopted after the end of the legislative session; and
- Definitions are clarified and added.