

**E2SSB 5740** - H COMM AMD  
By Committee on Appropriations

**NOT CONSIDERED 12/23/2019**

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

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the  
4 secure choice retirement savings program act.

5 NEW SECTION. **Sec. 2.** The legislature finds: That large numbers  
6 of households in this state have no or inadequate retirement savings  
7 and many of those households do not have access to any savings plan  
8 at work; that this lack of retirement savings and coverage is more  
9 prevalent among low-income households; and that it is well-  
10 established that most workers will save for retirement if they are  
11 offered a workplace savings program using an opt-out approach.  
12 Washington state is deeply concerned about the retirement prospects  
13 of its citizens and the strain that large numbers of ill-prepared  
14 retirees may impose on taxpayer-financed elderly assistance programs  
15 for housing, food, medical care, and other necessities. Accordingly,  
16 this act will facilitate voluntary retirement savings by workers in  
17 this state by establishing an IRA savings program with automatic  
18 enrollment ("auto-IRA") and requiring employers in this state that do  
19 not offer a retirement plan to make the program available to their  
20 employees.

21 NEW SECTION. **Sec. 3.** The definitions in this section apply  
22 throughout sections 2 through 11 of this act unless the context  
23 clearly requires otherwise.

24 (1) "Administrative fee" means the amount deducted from the  
25 investment fund of a covered employee and used to pay the costs  
26 associated with administering the program.

27 (2) "Administrative fund" means the secure choice retirement  
28 savings administrative fund established under section 7 of this act.

29 (3) "Compensation" means compensation within the meaning of  
30 section 219(f)(1) of the internal revenue code that is received by a

1 covered employee from a covered employer or a professional employer  
2 organization, as such term is defined in RCW 50.04.298.

3 (4) "Contribution rate" means the percentage of a covered  
4 employee's compensation that is withheld from his or her compensation  
5 and paid to the IRA established for the covered employee under the  
6 program.

7 (5) "Covered employee" means any individual who is eighteen years  
8 of age or older, who is employed by a covered employer, and who has  
9 compensation that is allocable to the state. For purposes of the  
10 investment, withdrawal, transfer, rollover, or other distribution of  
11 an IRA, the term covered employee also includes the beneficiary of a  
12 deceased covered employee and an "alternate payee" under state  
13 domestic relations law. For purposes of sections 2 through 11 of this  
14 act, a covered employee, as defined in this subsection, who is  
15 performing services for a client employer that has entered into a  
16 professional employer agreement with a professional employer  
17 organization, as such terms are defined in RCW 50.04.298, must be  
18 treated as employed by the client employer and not by the  
19 professional employer organization.

20 (6) "Covered employer" means an employer that either:

21 (a) Satisfies both of the following requirements:

22 (i) Has been in business for at least five years; and

23 (ii) Has not sponsored, maintained, or contributed to a  
24 retirement plan under sections 401(a), 401(k), 403(a), 403(b),  
25 408(k), or 408(p) of the internal revenue code, including such a plan  
26 sponsored or maintained by a professional employer organization with  
27 which the employer has a professional employer agreement, as such  
28 terms are defined in RCW 50.04.298, at any time during the preceding  
29 two calendar years and does not currently sponsor, maintain, or  
30 contribute to a retirement plan; or

31 (b) Elects to be a covered employer if and as permitted in  
32 accordance with rules and procedures established by the director.

33 (7) "Director" means the director of the department of commerce.

34 (8) "Employer" means a person or entity engaged in a business,  
35 profession, trade, or other enterprise in the state, whether for  
36 profit or not for profit, that employs more than five individuals in  
37 the state; provided that a federal or state entity, agency, or  
38 instrumentality, or any political subdivision thereof, is not an  
39 employer.

1 (9) "Internal revenue code" means the federal internal revenue  
2 code of 1986, as amended.

3 (10) "Investment advisor" means:

4 (a) An investment advisor registered under the federal investment  
5 advisers act of 1940; or

6 (b) A bank or other institution exempt from registration under  
7 the federal investment advisers act of 1940.

8 (11) "Investment fund" means each investment portfolio  
9 established by the director within the trust for investment purposes.

10 (12) "IRA" means either an individual retirement account or  
11 individual retirement annuity established under section 408A of the  
12 internal revenue code.

13 (13) "Program" means the secure choice retirement savings program  
14 established under sections 2 through 11 of this act.

15 (14) "Trust" means the IRA retirement trust or annuity contract  
16 established under section 8 of this act.

17 (15) "Trustee" means the trustee of the trust, including an  
18 insurance company issuing an annuity contract, selected by the  
19 director under section 8 of this act.

20 NEW SECTION. **Sec. 4.** (1) The director has the following powers  
21 and duties:

22 (a) To design, establish, and operate the program in accordance  
23 with the requirements set forth in sections 2 through 11 of this act;

24 (b) To collect administrative fees to defray the costs of  
25 administering the program;

26 (c) To enter into contracts necessary or desirable for the  
27 establishment and administration of the program;

28 (d) To hire, retain, and terminate other state or nonstate  
29 entities as the director deems necessary or desirable for all or part  
30 of the services necessary for the management of the program,  
31 including, but not limited to, consultants, investment advisors,  
32 trustees, custodians, insurance companies, recordkeepers,  
33 administrators, actuaries, counsel, auditors, and other  
34 professionals; provided that each service provider must be authorized  
35 to do business in this state;

36 (e) To determine the type or types of IRAs to be offered, the  
37 default contribution rate and automatic escalation rate;

1 (f) To employ a program director and such other individuals as  
2 the director determines to be necessary or desirable to administer  
3 the program and the administrative fund;

4 (g) To develop and implement an outreach plan to gain input and  
5 disseminate information regarding the program and retirement and  
6 financial education in general, to employees, employers, and other  
7 constituents in the state;

8 (h) To develop and implement a marketing strategy for the program  
9 that includes outreach to communities of color and encourages small  
10 business engagement;

11 (i) To determine the number of days by which an eligible employer  
12 must make the program available to a covered employee upon first  
13 becoming an eligible employer or covered employee;

14 (j) To adopt rules and procedures for the establishment and  
15 operation of the program and to take such other actions necessary or  
16 desirable to establish and operate the program in accordance with  
17 sections 2 through 11 of this act.

18 (2) The director shall use the following principles in the design  
19 and operation of the program:

20 (a) Operate with low costs but sufficient to ensure that the  
21 program is sustainable;

22 (b) Structure the program so that covered employees are  
23 automatically enrolled and covered employer participation is  
24 required;

25 (c) Ensure that the program does not conflict with or be  
26 preempted by federal law, including the employee retirement income  
27 security act of 1974;

28 (d) Provide customer service processes to any and all pertinent  
29 persons and disseminate program information to covered employers and  
30 covered employees;

31 (e) Monitor the investment advisor's financial management  
32 policies, processes, and performance.

33 (3) Other state agencies must provide appropriate and reasonable  
34 assistance to the director as needed, including gathering data and  
35 information, in order for the director to carry out the purpose of  
36 sections 2 through 11 of this act.

37 (4) The director shall not impose any obligations on the state,  
38 nor may it pledge the credit of the state.

39 (5) The director, in consultation with the state investment board  
40 and the department of financial institutions, has discretion to

1 establish and maintain the program by: Contracting with another state  
2 to use that state's auto-IRA program, partnering with one or more  
3 states to create a joint auto-IRA program that includes the program,  
4 or forming a consortium with one or more other states in which  
5 certain aspects of each state's program are combined for  
6 administrative convenience and efficiency, provided that in any such  
7 case, the auto-IRA program used, the joint program, or the consortium  
8 otherwise satisfies the requirements of this chapter.

9 NEW SECTION. **Sec. 5.** (1) The director, the trustee, and each  
10 investment adviser or other person which has control of the assets of  
11 the trust shall be a fiduciary with respect to the trust and IRAs  
12 established and maintained under the program.

13 (2) Each covered employer is required to provide covered  
14 employees with such information as the director directs. No employer  
15 acting as such is a fiduciary with respect to the trust or an IRA or  
16 has fiduciary responsibilities under sections 2 through 11 of this  
17 act.

18 (3) Each fiduciary shall discharge its duties with respect to the  
19 program solely in the interests of covered employees and with the  
20 care, skill, prudence, and diligence under the circumstances then  
21 prevailing that a prudent person acting in a like capacity and  
22 familiar with those matters would use in the conduct of an enterprise  
23 of like character and aims.

24 NEW SECTION. **Sec. 6.** The secure choice retirement savings  
25 program must be designed, established, and operated in accordance  
26 with the following:

27 (1) Each covered employer is required to offer to each covered  
28 employee an opportunity to contribute to an IRA established under the  
29 program for the benefit of the covered employee through withholding  
30 from his or her compensation. No employer is permitted to contribute  
31 to the program or to endorse or otherwise promote the program.

32 (2) Unless the covered employee chooses otherwise, he or she  
33 shall be automatically enrolled in the program and contributions  
34 shall be withheld from such covered employee's compensation at a rate  
35 set by the director unless the covered employee elects not to  
36 contribute or to contribute at a different rate.

37 (3) The contribution rate of each covered employee shall be  
38 increased at such rate and at such intervals as from time to time

1 established by the director, unless the covered employee elects not  
2 to have such automatic increases apply.

3 (4) The IRAs are intended to qualify for favorable federal income  
4 tax treatment under section 408A of the internal revenue code.

5 (5) The director may establish intervals after which a covered  
6 employee must reaffirm elections, including opt-out elections, with  
7 regard to participation or escalation.

8 (6) Each covered employer shall deposit covered employees'  
9 withheld contributions under the program with the trustee in such  
10 manner as is determined by the director, provided that the employer  
11 shall deliver the amounts withheld to the trustee in good order  
12 within ten business days after the date such amounts otherwise would  
13 have been paid to the covered employee.

14 (7) The director shall determine the rules and procedures for  
15 withdrawals, distributions, transfers, and rollovers of IRAs and for  
16 the designation of IRA beneficiaries.

17 (8) The director shall report annually to the governor and the  
18 legislature outlining the director's activities and the program's  
19 operations.

20 (9) The director shall cause to be furnished to each covered  
21 employer:

22 (a) Information regarding the program;

23 (b) Required disclosures to be furnished to covered employees.

24 Such disclosures must include:

25 (i) A description of the benefits and risks associated with  
26 making contributions under the program;

27 (ii) Instructions about how to obtain additional information  
28 about the program;

29 (iii) A description of the tax consequences of an IRA, which may  
30 consist of or include the disclosure statement required to be  
31 distributed by the trustee under the internal revenue code and the  
32 treasury regulations thereunder;

33 (iv) A statement that covered employees seeking financial advice  
34 should contact their own financial advisors and that covered  
35 employers are not in a position to provide financial advice and that  
36 covered employers are not liable for decisions covered employees make  
37 under sections 2 through 11 of this act;

38 (v) A statement that the program is not an employer-sponsored  
39 retirement plan;

1 (vi) A statement that neither the program nor the covered  
2 employee's IRA established under the program is guaranteed by the  
3 state;

4 (vii) A statement that neither a covered employer nor the state  
5 will monitor or has an obligation to monitor the covered employee's  
6 eligibility under the internal revenue code to make contributions to  
7 an IRA or to monitor whether the covered employee's contributions to  
8 the IRA established for the covered employee under the program exceed  
9 the maximum permissible IRA contribution; that it is the covered  
10 employee's responsibility to monitor such matters; and that the  
11 state, the program, and the covered employer have no liability with  
12 respect to any failure of the covered employee to be eligible to make  
13 IRA contributions or any contribution in excess of the maximum IRA  
14 contribution;

15 (c) Information, forms, and instructions to be furnished to  
16 covered employees at such times as the director determines that  
17 provide the covered employee with the procedures for:

18 (i) Making contributions to the covered employee's IRA  
19 established under the program, including a description of the  
20 automatic enrollment rate, the automatic escalation rate and  
21 frequency, and the right to elect to make no contribution or to  
22 change the contribution rate under the program;

23 (ii) Making an investment election with respect to the covered  
24 employee's IRA established under the program, including a description  
25 of the default investment fund;

26 (iii) Making transfers, rollovers, withdrawals, and other  
27 distributions from the covered employee's IRA.

28 (10) Each covered employer shall deliver or facilitate the  
29 delivery of the items set forth in subsection (9)(b) and (c) of this  
30 section to each covered employee at such time and in such manner as  
31 determined by the director.

32 (11) The program must be designed and operated in a manner that  
33 will cause it not to be an employee benefit plan within the meaning  
34 of section 3(3) of the employee retirement income security act of  
35 1974. If any provision of this act is found to be in conflict with  
36 federal law or regulations, including the employee retirement income  
37 security act of 1974, the conflicting provision of this act is  
38 declared to be inoperative solely to the extent of the conflict, and  
39 that finding or determination shall not affect the operation of the  
40 remainder of this act.

1 (12) Nothing in sections 2 through 11 of this act prohibits a  
2 covered employer from contracting with a third party, such as a  
3 payroll service provider or a professional employer organization, to  
4 assist such employer with the tasks required of a covered employer  
5 under sections 2 through 11 of this act.

6 NEW SECTION. **Sec. 7.** (1) The secure choice retirement savings  
7 administrative fund is hereby established in the custody of the state  
8 treasurer as a nonappropriated account separate and apart from the  
9 trust. The director shall use moneys in the administrative fund to  
10 pay for administrative expenses it incurs in the performance of its  
11 duties under sections 2 through 11 of this act. The administrative  
12 fund may receive any grants or other moneys designated for the  
13 administrative fund from the state, or any unit of federal or local  
14 government, or any other person. Any interest earnings that are  
15 attributable to moneys in the administrative fund must be deposited  
16 into the administrative fund. Only the director may authorize  
17 expenditures from the account. The account is subject to allotment  
18 procedures under chapter 43.88 RCW, but an appropriation is not  
19 required for expenditures.

20 (2) The account is authorized to maintain a cash deficit in the  
21 account for a period of no more than six fiscal years after the  
22 implementation of the secure choice retirement savings program to  
23 defray its initial program administration costs. By January 1, 2020,  
24 the director shall establish a program administration spending plan  
25 and an administrative fee schedule to discharge any projected cash  
26 deficit to the account. The legislature may make appropriations into  
27 the account for the purpose of reducing program administration costs.

28 (3) Administrative fees may be used to contract with another  
29 state to use that state's program or to create a joint program or  
30 consortium with one or more states offering an existing program. No  
31 other state funds may be used to contract or partner with one or more  
32 other states.

33 NEW SECTION. **Sec. 8.** There is hereby created as an  
34 instrumentality of the state a trust to be known as the secure choice  
35 retirement savings trust.

36 (1) The director shall appoint an institution qualified to act as  
37 trustee of IRA trusts or insurance company issuing annuity contracts



1 under section 408 of the internal revenue code and licensed to do  
2 business in the state to act as trustee.

3 (2) The assets of IRAs established for covered employees must be  
4 allocated to the trust and combined for investment purposes. Trust  
5 assets must be managed and administered for the exclusive purposes of  
6 providing benefits to covered employees and defraying reasonable  
7 expenses of administering and maintaining, and managing investments,  
8 of the IRAs and the trust, including the expenses of the director  
9 under section 4 of this act.

10 (3) The director shall establish within the trust one or more  
11 investment funds, each pursuing an investment strategy and policy  
12 established by the director. The underlying investments of each  
13 investment fund shall be diversified, to the extent the director  
14 determines to be appropriate, so as to minimize the risk of large  
15 losses under the circumstances. The director may, at any time and  
16 from time to time, add, replace, or remove any investment fund.

17 (4) The director may allow covered employees to allocate assets  
18 of their IRAs among such investment funds and in such case, the  
19 director also may designate an investment fund as a default  
20 investment for the IRAs of covered employees who do not make an  
21 investment choice.

22 (5) Subject to subsection (6) of this section, the director, in  
23 consultation with such third-party professional investment advisers,  
24 managers, or consultants as it may retain, shall select the  
25 underlying investments of each investment fund. Such underlying  
26 investments may include, without limitation, shares of mutual funds  
27 and exchange-traded funds, publicly traded equity, and fixed-income  
28 securities, and other investments available for investment by the  
29 trust. No investment fund may invest in any bond, debt instrument, or  
30 other security issued by this state.

31 (6) The director may, in its discretion, retain an investment  
32 adviser to select and manage the investments of an investment fund on  
33 a discretionary basis, subject to the director's ongoing review and  
34 oversight.

35 (7) The trustee is subject to directions of the director under  
36 subsection (5) of this section or an investment adviser under  
37 subsection (6) of this section and otherwise has no responsibility  
38 for the selection, retention, or disposition of trust investments or  
39 assets.

1 (8) The assets of the trust must at all times be preserved,  
2 invested, and expended solely for the purposes of the trust and no  
3 property rights therein shall exist in favor of the state or any  
4 covered employer. Trust assets may not be transferred or used by the  
5 state for any purposes other than the purposes of the trust or  
6 funding the expenses of operating the program, including the expenses  
7 of the director. Amounts deposited with the trustee are not property  
8 of the state and may not be commingled with state funds and the state  
9 has no claim to or against, or interest in, the trust assets.

10 (9) The assets of the trust shall at all times be held separate  
11 and apart from the assets of the state. None of the state, the  
12 program, the director, nor any employer may guaranty any investment,  
13 rate of return, or interest on amounts held in the trust, an  
14 investment fund, or any IRA. None of the state, the program, the  
15 director, or any employer is liable for any losses incurred by trust  
16 investments or otherwise by any covered employee or other person as a  
17 result of participating in the program except for any liability that  
18 arises out of a breach of fiduciary duty under section 5 of this act.  
19 No covered employer is liable for any losses incurred by trust  
20 investments or otherwise by any covered employee or other person as a  
21 result of participating in the program.

22 (10) Any security issued, managed, or invested by the director  
23 within the secure choice retirement savings trust on behalf of an  
24 individual participating in the program is exempt from RCW 21.20.140.

25 (11) The trust is authorized to engage in trust business under  
26 Title 30B RCW and is exempt from the requirement to obtain a  
27 certificate of authority from the department of financial  
28 institutions under Title 30B RCW.

29 (12) If the director determines to exercise his or her discretion  
30 under section 4(5) of this act to establish the program by using  
31 another state's auto-IRA program, establishing a joint program, or a  
32 consortium with one or more other states, then the trust may be  
33 established by adopting the trust established under such other  
34 state's program or as a master trust or similar arrangement with such  
35 other states, provided that such trust, master trust, or similar  
36 arrangement otherwise satisfies the requirements of this section.

37 NEW SECTION. **Sec. 9.** If the director determines to exercise his  
38 or her discretion under section 4(5) of this act:

1 (1) Only the secure choice retirement savings administrative fund  
2 may be used to contract with another state to use that state's  
3 program or to create a joint program or consortium with one or more  
4 states offering an existing program;

5 (2) The rate of the administrative fee for covered employees may  
6 not exceed the rate charged to employees of another state  
7 participating in the same program; and

8 (3) The rate of the administrative fee may be increased only  
9 after consultation with the state investment board and the chair and  
10 ranking members of the appropriate legislative committees.

11 NEW SECTION. **Sec. 10.** The director may establish a pilot  
12 program for covered employers to auto enroll employees into an IRA by  
13 January 1, 2020. The director may also provide for a staggered  
14 rollout of the program so that covered employers are initially  
15 required to offer the program to covered employees in stages based on  
16 employee headcount or such other criteria as may be established by  
17 the director.

18 NEW SECTION. **Sec. 11.** (1) The director must develop an  
19 implementation plan that details how the department of commerce will  
20 design, establish, operate, and market the program under sections 2  
21 through 10 of this act.

22 (2) By December 1, 2019, and in compliance with RCW 43.01.036,  
23 the department of commerce must submit a report to the appropriate  
24 committees of the legislature describing the implementation plan.

25 (3) Beginning on December 1st of the first year after fully  
26 implementing the program, the director must report annually on  
27 administrative fees. The report shall include:

28 (a) An update on progress to date towards eliminating the cash  
29 deficit in the secure choice retirement savings administrative fund;

30 (b) The administrative fee cost basis assigned to each state  
31 participating in the program;

32 (c) The uses of administrative fees; and

33 (d) A plan to the reduce administrative fee cost basis for  
34 covered employees as the assets under management in the secure choice  
35 retirement savings trust increase over time.

36 NEW SECTION. **Sec. 12.** RCW 43.330.730 (Finding—2015 c 296) is  
37 decodified.

1       **Sec. 13.** RCW 43.330.732 and 2015 c 296 s 2 are each amended to  
2 read as follows:

3       The definitions in this section apply throughout this subchapter  
4 unless the context clearly requires otherwise.

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

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

12       (3) "Eligible employer" means a self-employed individual, sole  
13 proprietor, or an employer with (~~fewer than~~) at least one  
14 (~~hundred~~) qualified employee(~~s~~) at the time of enrollment.

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

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

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

28       ~~((7))~~ (6) "Private sector financial services firms" or  
29 "financial services firms" mean persons or entities licensed or  
30 holding a certificate of authority and in good standing by either the  
31 department of financial institutions or the office of the insurance  
32 commissioner and meeting all federal laws and regulations to offer  
33 retirement plans.

34       ~~((8))~~ (7) "Qualified employee" means those workers who are  
35 defined by the federal internal revenue service to be eligible to  
36 participate in a specific qualified plan.

37       ~~((9))~~ (8) "Target date or other similar fund" means a hybrid  
38 mutual fund that automatically resets the asset mix of stocks, bonds,  
39 and cash equivalents in its portfolio according to a selected time

1 frame that is appropriate for a particular investor. A target date is  
2 structured to address a projected retirement date.

3 ~~((10))~~ (9) "Washington small business retirement marketplace"  
4 or "marketplace" means the retirement savings program created to  
5 connect eligible employers and their employees with approved plans to  
6 increase retirement savings.

7 **Sec. 14.** RCW 43.330.735 and 2017 c 69 s 1 are each amended to  
8 read as follows:

9 (1) The Washington small business retirement marketplace is  
10 created.

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

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

18 (4) The director shall approve for participation in the  
19 marketplace all private sector financial services firms that meet the  
20 requirements of RCW 43.330.732~~((7))~~ (6).

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

32 (6) (a) Prior to approving a plan to be offered on the  
33 marketplace, the department must receive verification from the  
34 department of financial institutions or the office of the insurance  
35 commissioner:

36 (i) That the private sector financial services firm offering the  
37 plan meets the requirements of RCW 43.330.732~~((7))~~ (6); and

1 (ii) That the plan meets the requirements of this section  
2 excluding subsection (9) of this section which is subject to federal  
3 laws and regulations.

4 (b) If the plan includes either life insurance or annuity  
5 products, or both, the office of the insurance commissioner may  
6 request that the department of financial institutions conduct the  
7 plan review as provided in (a)(ii) of this subsection prior to  
8 submitting its verification to the department.

9 (c) The director may remove approved plans that no longer meet  
10 the requirements of this chapter.

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

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

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

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

28 (11) Financial services firms selected by the department to offer  
29 approved plans on the marketplace may not charge the participating  
30 employer an administrative fee and may not charge enrollees more than  
31 one hundred basis points in total annual fees and must provide  
32 information about their product's historical investment performance.  
33 Financial services firms may charge enrollees a de minimis fee for  
34 new and/or low balance accounts in amounts negotiated and agreed upon  
35 by the department and financial services firms. The director shall  
36 limit plans to those with total fees the director considers  
37 reasonable based on all the facts and circumstances.

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

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

3 **Sec. 15.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and  
4 2018 c 127 s 6 are each reenacted and amended to read as follows:

5 (1) Money in the treasurer's trust fund may be deposited,  
6 invested, and reinvested by the state treasurer in accordance with  
7 RCW 43.84.080 in the same manner and to the same extent as if the  
8 money were in the state treasury, and may be commingled with moneys  
9 in the state treasury for cash management and cash balance purposes.

10 (2) All income received from investment of the treasurer's trust  
11 fund must be set aside in an account in the treasury trust fund to be  
12 known as the investment income account.

13 (3) The investment income account may be utilized for the payment  
14 of purchased banking services on behalf of treasurer's trust funds  
15 including, but not limited to, depository, safekeeping, and  
16 disbursement functions for the state treasurer or affected state  
17 agencies. The investment income account is subject in all respects to  
18 chapter 43.88 RCW, but no appropriation is required for payments to  
19 financial institutions. Payments must occur prior to distribution of  
20 earnings set forth in subsection (4) of this section.

21 (4)(a) Monthly, the state treasurer must distribute the earnings  
22 credited to the investment income account to the state general fund  
23 except under (b), (c), and (d) of this subsection.

24 (b) The following accounts and funds must receive their  
25 proportionate share of earnings based upon each account's or fund's  
26 average daily balance for the period: The 24/7 sobriety account, the  
27 Washington promise scholarship account, the Gina Grant Bull memorial  
28 legislative page scholarship account, the Washington advanced college  
29 tuition payment program account, the Washington college savings  
30 program account, the accessible communities account, the Washington  
31 achieving a better life experience program account, the community and  
32 technical college innovation account, the agricultural local fund,  
33 the American Indian scholarship endowment fund, the foster care  
34 scholarship endowment fund, the foster care endowed scholarship trust  
35 fund, the contract harvesting revolving account, the Washington state  
36 combined fund drive account, the commemorative works account, the  
37 county enhanced 911 excise tax account, the toll collection account,  
38 the developmental disabilities endowment trust fund, the energy  
39 account, the fair fund, the family and medical leave insurance

1 account, the fish and wildlife federal lands revolving account, the  
2 natural resources federal lands revolving account, the food animal  
3 veterinarian conditional scholarship account, the forest health  
4 revolving account, the fruit and vegetable inspection account, the  
5 future teachers conditional scholarship account, the game farm  
6 alternative account, the GET ready for math and science scholarship  
7 account, the Washington global health technologies and product  
8 development account, the grain inspection revolving fund, the  
9 Washington history day account, the industrial insurance rainy day  
10 fund, the juvenile accountability incentive account, the law  
11 enforcement officers' and firefighters' plan 2 expense fund, the  
12 local tourism promotion account, the low-income home rehabilitation  
13 revolving loan program account, the multiagency permitting team  
14 account, the northeast Washington wolf-livestock management account,  
15 the pilotage account, the produce railcar pool account, the regional  
16 transportation investment district account, the rural rehabilitation  
17 account, the Washington sexual assault kit account, the stadium and  
18 exhibition center account, the youth athletic facility account, the  
19 self-insurance revolving fund, the children's trust fund, the  
20 Washington horse racing commission Washington bred owners' bonus fund  
21 and breeder awards account, the Washington horse racing commission  
22 class C purse fund account, the individual development account  
23 program account, the Washington horse racing commission operating  
24 account, the life sciences discovery fund, the Washington state  
25 heritage center account, the reduced cigarette ignition propensity  
26 account, the center for childhood deafness and hearing loss account,  
27 the school for the blind account, the Millersylvania park trust fund,  
28 the public employees' and retirees' insurance reserve fund, the  
29 school employees' benefits board insurance reserve fund, (~~{the}~~)  
30 the public employees' and retirees' insurance account, (~~{the}~~) the  
31 school employees' insurance account, the secure choice retirement  
32 savings administrative fund, and the radiation perpetual maintenance  
33 fund.

34 (c) The following accounts and funds must receive eighty percent  
35 of their proportionate share of earnings based upon each account's or  
36 fund's average daily balance for the period: The advanced right-of-  
37 way revolving fund, the advanced environmental mitigation revolving  
38 account, the federal narcotics asset forfeitures account, the high  
39 occupancy vehicle account, the local rail service assistance account,  
40 and the miscellaneous transportation programs account.



1 (d) Any state agency that has independent authority over accounts  
2 or funds not statutorily required to be held in the custody of the  
3 state treasurer that deposits funds into a fund or account in the  
4 custody of the state treasurer pursuant to an agreement with the  
5 office of the state treasurer shall receive its proportionate share  
6 of earnings based upon each account's or fund's average daily balance  
7 for the period.

8 (5) In conformance with Article II, section 37 of the state  
9 Constitution, no trust accounts or funds shall be allocated earnings  
10 without the specific affirmative directive of this section.

11 **Sec. 16.** RCW 30B.04.040 and 2014 c 37 s 306 are each amended to  
12 read as follows:

13 Notwithstanding any other provision of this title, a person is  
14 exempt from the requirement of a certificate of authority or approval  
15 under this title, or from regulation by the director pursuant to this  
16 title, if the person is:

17 (1) An individual, sole proprietor, or general partnership or  
18 joint venture composed of individuals;

19 (2) Engaging in business in this state (a) as a national banking  
20 association or (b) as a federal mutual savings bank, federal stock  
21 savings bank, or federal savings and loan association under authority  
22 of the office of the comptroller of the currency;

23 (3) Acting in a manner otherwise authorized by law and within the  
24 scope of authority as an agent of a trust institution with respect to  
25 an activity which is not an unauthorized trust activity;

26 (4) Acting as a fiduciary solely by reason of being appointed by  
27 a court to perform the duties of a trustee, guardian, conservator, or  
28 receiver;

29 (5) While holding oneself out to the public as an attorney-at-  
30 law, law firm, or limited license legal technician, performing a  
31 service customarily performed as an attorney-at-law, law firm, or  
32 limited license legal technician in a manner approved and authorized  
33 by the supreme court of the state of Washington;

34 (6) Acting as an escrow agent pursuant to the escrow agent  
35 registration act, chapter 18.44 RCW, or in one's capacity as an  
36 authorized title agent under Title 48 RCW;

37 (7) Acting as trustee under a deed of trust delivered only as  
38 security for the payment of money or for the performance of another  
39 act;

1 (8) Receiving and distributing rents and proceeds of sale as a  
2 licensed real estate broker on behalf of a principal in a manner  
3 authorized by the Washington department of licensing;

4 (9) Engaging in a securities transaction or providing an  
5 investment advisory service in the capacity of a licensed and  
6 registered broker-dealer, investment advisor, or registered  
7 representative thereof, provided the activity is regulated by the  
8 department or the United States securities and exchange commission;

9 (10) Engaging in the sale and administration of an insurance  
10 product by an insurance company or agent licensed by the office of  
11 the insurance commissioner to the extent that the activity is  
12 regulated by the office of the insurance commissioner;

13 (11) Acting as trustee under a voting trust as provided by  
14 Washington state law;

15 (12) Acting as trustee by a public, private, or independent  
16 institution of higher education or a university system authorized  
17 under Washington state law, including its affiliated foundations or  
18 corporations, with respect to endowment funds or other funds owned,  
19 controlled, provided to, or otherwise made available to such  
20 institution with respect to its educational or research purposes;

21 (13) Acting as a private trust or private trust company to the  
22 extent exempt from regulation of the department as set forth in  
23 chapter 30B.64 RCW; ((~~or~~))

24 (14) The trust created in section 8 of this act, or a trustee of  
25 such trust; or

26 (15) Engaging in other activities expressly excluded from the  
27 application of this title by rule of the director.

28 NEW SECTION. **Sec. 17.** Sections 2 through 11 of this act are  
29 each added to chapter 43.330 RCW."

30 Correct the title.

EFFECT: (1) Defines "administrative fee" as the amount deducted  
from the investment account of a covered employee and used to pay the  
costs associated with administering the program.

(2) Defines "IRA" as a ROTH IRA only and removes traditional IRAs  
from the definition. Requires the Secure Choice Retirement Savings  
Program to offer only accounts intended to qualify for favorable tax  
treatment as a ROTH IRA. Requires the program to be designed to  
operate not to be an employee benefit plan within the meaning of the  
federal Employee Retirement Income and Security Act (ERISA), and  
provides a severability clause for any provision found to be in

conflict with federal law or regulations, including the Employee Retirement Income Security Act of 1974.

(3) Requires the Department of Commerce to develop and implement a marketing strategy for the program that includes outreach to communities of color and encourages small business engagement.

(4) Provides that if the Department of Commerce chooses to contract with another state or states to use an existing program: Administrative fees in the program's administrative fund may be used for the costs of the contract; no other state funds may be used to contract or partner; the rate of the administrative fee for Washington employees may not exceed the rate paid by employees of another state participating in the same program; and an increase in the rate of the administrative fee is allowed only after consultation with the Washington State Investment Board and the chairs and ranking members of the appropriate legislative committees.

(5) Requires the Department of Commerce to develop an implementation plan that details how the program will be designed, established, operated, and marketed and submit a report describing the implementation plan to the appropriate committees of the Legislature by December 1, 2019.

(6) Requires the Department of Commerce to submit an annual report to the Legislature with an update on: The progress on eliminating the cash deficit in the administrative fund; the administrative fee cost basis assigned to each state participating in the program; the use of administrative fees; and a plan to reduce the administrative fee cost basis.

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