

E2SSB 5740 - H COMM AMD

By Committee on Consumer Protection & Business

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.

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

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

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

23 (3) Administrative fees may be used to contract with another
24 state to use that state's program or to create a joint program or
25 consortium with one or more states offering an existing program. No
26 other state funds may be used to contract or partner with one or more
27 other states.

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

31 (1) The director shall appoint an institution qualified to act as
32 trustee of IRA trusts or insurance company issuing annuity contracts
33 under section 408 of the internal revenue code and licensed to do
34 business in the state to act as trustee.

35 (2) The assets of IRAs established for covered employees must be
36 allocated to the trust and combined for investment purposes. Trust
37 assets must be managed and administered for the exclusive purposes of
38 providing benefits to covered employees and defraying reasonable
39 expenses of administering and maintaining, and managing investments,

1 of the IRAs and the trust, including the expenses of the director
2 under section 4 of this act.

3 (3) The director shall establish within the trust one or more
4 investment funds, each pursuing an investment strategy and policy
5 established by the director. The underlying investments of each
6 investment fund shall be diversified, to the extent the director
7 determines to be appropriate, so as to minimize the risk of large
8 losses under the circumstances. The director may, at any time and
9 from time to time, add, replace, or remove any investment fund.

10 (4) The director may allow covered employees to allocate assets
11 of their IRAs among such investment funds and in such case, the
12 director also may designate an investment fund as a default
13 investment for the IRAs of covered employees who do not make an
14 investment choice.

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

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

28 (7) The trustee is subject to directions of the director under
29 subsection (5) of this section or an investment adviser under
30 subsection (6) of this section and otherwise has no responsibility
31 for the selection, retention, or disposition of trust investments or
32 assets.

33 (8) The assets of the trust must at all times be preserved,
34 invested, and expended solely for the purposes of the trust and no
35 property rights therein shall exist in favor of the state or any
36 covered employer. Trust assets may not be transferred or used by the
37 state for any purposes other than the purposes of the trust or
38 funding the expenses of operating the program, including the expenses
39 of the director. Amounts deposited with the trustee are not property

1 of the state and may not be commingled with state funds and the state
2 has no claim to or against, or interest in, the trust assets.

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

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

18 (11) The trust is authorized to engage in trust business under
19 Title 30B RCW and is exempt from the requirement to obtain a
20 certificate of authority from the department of financial
21 institutions under Title 30B RCW.

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

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

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

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

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

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

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

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

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

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

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

25 (c) The uses of administrative fees; and

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

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

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

33 The definitions in this section apply throughout this subchapter
34 unless the context clearly requires otherwise.

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

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

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

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

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

19 ~~(6))~~ (6) "Participating employer" means any eligible employer with
20 employees enrolled in an approved plan offered through the Washington
21 small business retirement marketplace who chooses to participate in
22 the marketplace and offers approved plans to employees for voluntary
23 enrollment.

24 (~~(7))~~ (6) "Private sector financial services firms" or
25 "financial services firms" mean persons or entities licensed or
26 holding a certificate of authority and in good standing by either the
27 department of financial institutions or the office of the insurance
28 commissioner and meeting all federal laws and regulations to offer
29 retirement plans.

30 (~~(8))~~ (7) "Qualified employee" means those workers who are
31 defined by the federal internal revenue service to be eligible to
32 participate in a specific qualified plan.

33 (~~(9))~~ (8) "Target date or other similar fund" means a hybrid
34 mutual fund that automatically resets the asset mix of stocks, bonds,
35 and cash equivalents in its portfolio according to a selected time
36 frame that is appropriate for a particular investor. A target date is
37 structured to address a projected retirement date.

38 (~~(10))~~ (9) "Washington small business retirement marketplace"
39 or "marketplace" means the retirement savings program created to

1 connect eligible employers and their employees with approved plans to
2 increase retirement savings.

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

5 (1) The Washington small business retirement marketplace is
6 created.

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

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

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

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

28 (6) (a) Prior to approving a plan to be offered on the
29 marketplace, the department must receive verification from the
30 department of financial institutions or the office of the insurance
31 commissioner:

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

34 (ii) That the plan meets the requirements of this section
35 excluding subsection (9) of this section which is subject to federal
36 laws and regulations.

37 (b) If the plan includes either life insurance or annuity
38 products, or both, the office of the insurance commissioner may
39 request that the department of financial institutions conduct the

1 plan review as provided in (a)(ii) of this subsection prior to
2 submitting its verification to the department.

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

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

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

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

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

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

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

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

37 **Sec. 15.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and
38 2018 c 127 s 6 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

36 (d) Any state agency that has independent authority over accounts
37 or funds not statutorily required to be held in the custody of the
38 state treasurer that deposits funds into a fund or account in the
39 custody of the state treasurer pursuant to an agreement with the
40 office of the state treasurer shall receive its proportionate share

1 of earnings based upon each account's or fund's average daily balance
2 for the period.

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

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

8 Notwithstanding any other provision of this title, a person is
9 exempt from the requirement of a certificate of authority or approval
10 under this title, or from regulation by the director pursuant to this
11 title, if the person is:

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

14 (2) Engaging in business in this state (a) as a national banking
15 association or (b) as a federal mutual savings bank, federal stock
16 savings bank, or federal savings and loan association under authority
17 of the office of the comptroller of the currency;

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

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

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

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

32 (7) Acting as trustee under a deed of trust delivered only as
33 security for the payment of money or for the performance of another
34 act;

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

38 (9) Engaging in a securities transaction or providing an
39 investment advisory service in the capacity of a licensed and

1 registered broker-dealer, investment advisor, or registered
2 representative thereof, provided the activity is regulated by the
3 department or the United States securities and exchange commission;

4 (10) Engaging in the sale and administration of an insurance
5 product by an insurance company or agent licensed by the office of
6 the insurance commissioner to the extent that the activity is
7 regulated by the office of the insurance commissioner;

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

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

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

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

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

23 NEW SECTION. **Sec. 17.** If any provision of this act is found to
24 be in conflict with federal law or regulations, including the
25 employee retirement income security act of 1974, the conflicting
26 provision of this act is declared to be inoperative solely to the
27 extent of the conflict, and that finding or determination shall not
28 affect the operation of the remainder of this act.

29 NEW SECTION. **Sec. 18.** Sections 2 through 11 of this act are
30 each added to chapter 43.330 RCW."

31 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.

(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.

(7) 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.

--- END ---