

E2SSB 5740 - S AMD 911

By Senator Mullet

ADOPTED 01/17/2020

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 13 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) "Commissioner" means the commissioner of the employment
30 security department.

1 (4) "Compensation" means compensation within the meaning of
2 section 219(f)(1) of the internal revenue code that is received by a
3 covered employee from a covered employer or a professional employer
4 organization, as such term is defined in RCW 50.04.298.

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

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

22 (7) "Covered employer" means an employer that either:

23 (a) Satisfies the following requirements:

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

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

33 (iii) Has more than five individuals in employment. For purposes
34 of this subsection (7)(a)(iii), the size of the employer for a
35 calendar year shall be determined by averaging the number of
36 employees reported by the employer pursuant to RCW 50A.20.030 over
37 the four completed quarters immediately preceding July 1st in the
38 immediately previous year; or

39 (b) Elects to be a covered employer if and as permitted in
40 accordance with rules and procedures established by the commissioner.

1 (8) "Employer" means a person or entity engaged in a business,
2 profession, trade, or other enterprise in the state, whether for
3 profit or not for profit; provided that a federal or state entity,
4 agency, or instrumentality, or any political subdivision thereof, is
5 not an employer.

6 (9) "Employment" has the same meaning as in RCW 50A.05.010.

7 (10) "Internal revenue code" means the federal internal revenue
8 code of 1986, as amended.

9 (11) "Investment adviser" means:

10 (a) An investment adviser registered under the federal investment
11 advisers act of 1940; or

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

14 (12) "Investment fund" means each investment portfolio
15 established by the commissioner within the trust for investment
16 purposes.

17 (13) "IRA" means either an individual retirement account or
18 individual retirement annuity established under section 408 or 408A
19 of the internal revenue code.

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

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

24 (16) "Trustee" means the trustee of the trust, including an
25 insurance company issuing an annuity contract, selected by the
26 commissioner under section 8 of this act.

27 NEW SECTION. **Sec. 4.** (1) The commissioner has the following
28 powers and duties:

29 (a) To design, establish, and operate the program in accordance
30 with the requirements set forth in sections 2 through 13 of this act;

31 (b) To collect administrative fees to defray the costs of
32 administering the program;

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

35 (d) To hire, retain, and terminate other state or nonstate
36 entities as the commissioner deems necessary or desirable for all or
37 part of the services necessary for the management of the program
38 including, but not limited to, consultants, investment advisers,
39 trustees, custodians, insurance companies, recordkeepers,

1 administrators, actuaries, counsel, auditors, and other
2 professionals; provided that each service provider must be authorized
3 to do business in this state;

4 (e) To determine the type or types of IRAs to be offered; the
5 default contribution rate, provided that the default contribution
6 rate is no less than three percent and no more than ten percent of a
7 covered employee's compensation; and the automatic escalation rate
8 provided that the contribution rate is no more than ten percent;

9 (f) To employ a program director and such other individuals as
10 the commissioner determines to be necessary or desirable to
11 administer the program and the administrative fund;

12 (g) To develop and implement an outreach plan to gain input and
13 disseminate information regarding the program and retirement and
14 financial education in general, to employees, employers, and other
15 constituents in the state;

16 (h) To prescribe the records covered employers must maintain, and
17 to inspect and make copies of such records at any reasonable time and
18 as often as may be necessary;

19 (i) To develop and implement a marketing strategy for the program
20 that includes outreach to communities of color and encourages small
21 business engagement;

22 (j) To determine the number of days by which an eligible employer
23 must make the program available to a covered employee upon first
24 becoming an eligible employer or covered employee;

25 (k) To adopt rules and procedures for the establishment and
26 operation of the program and to take such other actions necessary or
27 desirable to establish and operate the program in accordance with
28 sections 2 through 13 of this act.

29 (2) The commissioner shall use the following principles in the
30 design and operation of the program:

31 (a) Operate with reasonable costs but sufficient to ensure that
32 the program is sustainable;

33 (b) Structure the program so that covered employees are
34 automatically enrolled and covered employer participation is
35 required;

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

1 (d) Provide customer service processes to any and all pertinent
2 persons and disseminate program information to covered employers and
3 covered employees;

4 (e) Monitor the investment adviser's financial management
5 policies, processes, and performance.

6 (3) Other state agencies must provide appropriate and reasonable
7 assistance to the commissioner as needed, including gathering data
8 and information, in order for the commissioner to carry out the
9 purpose of sections 2 through 13 of this act. The commissioner may
10 reimburse the other state agencies from the administrative fund
11 established in section 7 of this act for reasonable expenses incurred
12 in providing appropriate and reasonable assistance.

13 (4) The commissioner shall not impose any obligations on the
14 state, nor may it pledge the credit of the state.

15 (5) The commissioner, in consultation with the legislature, has
16 the discretion to establish an advisory board of individuals with
17 experience in investments or retirement plan oversight and
18 management.

19 (6) The commissioner, in consultation with the state investment
20 board and the department of financial institutions, has discretion to
21 establish and maintain the program by: Contracting with another state
22 to use that state's auto-IRA program, partnering with one or more
23 states to create a joint auto-IRA program that includes the program,
24 or forming a consortium with one or more other states in which
25 certain aspects of each state's program are combined for
26 administrative convenience and efficiency, provided that in any such
27 case, the auto-IRA program used, the joint program, or the consortium
28 otherwise satisfies the requirements of this chapter.

29 NEW SECTION. **Sec. 5.** (1) The commissioner, the trustee, and
30 each investment adviser or other person which has discretionary
31 control of the assets of the trust shall be a fiduciary with respect
32 to the trust and IRAs established and maintained under the program.

33 (2) Each covered employer is required to provide covered
34 employees with such information as the commissioner directs. No
35 employer acting as such is a fiduciary with respect to the trust or
36 an IRA or has fiduciary responsibilities under sections 2 through 13
37 of this act.

38 (3) Each fiduciary shall discharge its duties with respect to the
39 program solely in the interests of covered employees and with the

1 care, skill, prudence, and diligence under the circumstances then
2 prevailing that a prudent person acting in a like capacity and
3 familiar with those matters would use in the conduct of an enterprise
4 of like character and aims.

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

8 (1) Each covered employer is required to offer to each covered
9 employee an opportunity to contribute to an IRA established under the
10 program for the benefit of the covered employee through withholding
11 from his or her compensation. No employer is permitted to contribute
12 to the program or to endorse or otherwise promote the program.

13 (2) Unless the covered employee chooses otherwise, he or she
14 shall be automatically enrolled in the program and contributions
15 shall be withheld from such covered employee's compensation at a rate
16 set by the commissioner unless the covered employee elects not to
17 contribute or to contribute at a different rate.

18 (3) The contribution rate of each covered employee shall be
19 increased at such rate and at such intervals as from time to time
20 established by the commissioner, unless the covered employee elects
21 not to have such automatic increases apply.

22 (4) The contribution rate of each covered employee shall be
23 applied whenever a covered employer compensates a covered employee. A
24 covered employer may not withhold contributions in lump sums from a
25 covered employee.

26 (5) An individual who no longer meets the definition of a covered
27 employee solely because the number of individuals in the employment
28 of the individual's employer is reduced from more than five to five
29 or less must be permitted to continue to contribute to the IRA
30 established for the individual's benefit without the participation of
31 the individual's employer.

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

34 (7) The commissioner may establish intervals after which a
35 covered employee must reaffirm elections, including opt-out
36 elections, with regard to participation or escalation.

37 (8) Each covered employer shall deposit covered employees'
38 withheld contributions under the program with the trustee in such
39 manner as is determined by the commissioner, provided that the

1 employer shall deliver the amounts withheld to the trustee in good
2 order within ten business days after the date such amounts otherwise
3 would have been paid to the covered employee.

4 (9) The commissioner shall determine the rules and procedures for
5 withdrawals, distributions, transfers, and rollovers of IRAs and for
6 the designation of IRA beneficiaries.

7 (10) The commissioner shall report annually to the governor and
8 the legislature outlining the commissioner's activities and the
9 program's operations.

10 (11) The commissioner shall cause to be furnished to each covered
11 employer and may provide directly to covered employees:

12 (a) Information regarding the program;

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

14 Such disclosures must include:

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

17 (ii) Instructions about how to obtain additional information
18 about the program;

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

23 (iv) A statement that covered employees seeking financial advice
24 should contact their own financial advisers and that covered
25 employers are not in a position to provide financial advice and that
26 covered employers are not liable for decisions covered employees make
27 under sections 2 through 13 of this act;

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

30 (vi) A statement that neither the program nor the covered
31 employee's IRA established under the program is guaranteed by the
32 state;

33 (vii) A statement that neither a covered employer nor the state
34 will monitor or has an obligation to monitor the covered employee's
35 eligibility under the internal revenue code to make contributions to
36 an IRA or to monitor whether the covered employee's contributions to
37 the IRA established for the covered employee under the program exceed
38 the maximum permissible IRA contribution; that it is the covered
39 employee's responsibility to monitor such matters; and that the
40 state, the program, and the covered employer have no liability with

1 respect to any failure of the covered employee to be eligible to make
2 IRA contributions or any contribution in excess of the maximum IRA
3 contribution;

4 (c) Information, forms, and instructions to be furnished to
5 covered employees at such times as the commissioner determines that
6 provide the covered employee with the procedures for:

7 (i) Making contributions to the covered employee's IRA
8 established under the program, including a description of the
9 automatic enrollment rate, the automatic escalation rate and
10 frequency, and the right to elect to make no contribution or to
11 change the contribution rate under the program;

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

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

17 (12) Each covered employer shall deliver or facilitate the
18 delivery of the items set forth in subsection (11)(b) and (c) of this
19 section to each covered employee at such time and in such manner as
20 determined by the commissioner.

21 (13) The program must be designed and operated in a manner that
22 will cause it not to be an employee benefit plan within the meaning
23 of section 3(3) of the employee retirement income security act of
24 1974. If any provision of this act is found to be in conflict with
25 federal law or regulations, including the employee retirement income
26 security act of 1974, the conflicting provision of this act is
27 declared to be inoperative solely to the extent of the conflict, and
28 that finding or determination shall not affect the operation of the
29 remainder of this act.

30 (14) Nothing in sections 2 through 13 of this act prohibits a
31 covered employer from contracting with a third party, such as a
32 payroll service provider or a professional employer organization, to
33 assist such employer with the tasks required of a covered employer
34 under sections 2 through 13 of this act.

35 NEW SECTION. **Sec. 7.** (1) The secure choice retirement savings
36 administrative fund is hereby established in the custody of the state
37 treasurer as a nonappropriated account separate and apart from the
38 trust. The commissioner shall use moneys in the administrative fund
39 to pay for administrative expenses it incurs in the performance of

1 its duties under sections 2 through 13 of this act. The
2 administrative fund may receive any grants or other moneys designated
3 for the administrative fund from the state, or any unit of federal or
4 local government, or any other person. Any interest earnings that are
5 attributable to moneys in the administrative fund must be deposited
6 into the administrative fund. Only the commissioner may authorize
7 expenditures from the fund. The fund is subject to allotment
8 procedures under chapter 43.88 RCW, but an appropriation is not
9 required for expenditures.

10 (2) The fund is authorized to maintain a cash deficit in the fund
11 for a period of no more than eight fiscal years after the
12 implementation of the secure choice retirement savings program to
13 defray its initial program administration costs. By January 1, 2021,
14 the commissioner shall establish a program administration spending
15 plan and an administrative fee schedule to discharge any projected
16 cash deficit to the fund. The legislature may make appropriations
17 into the fund for the purpose of reducing program administration
18 costs.

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

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

27 (1) The commissioner shall appoint an institution qualified to
28 act as trustee of IRA trusts or insurance company issuing annuity
29 contracts under section 408 of the internal revenue code and licensed
30 to do business in the state to act as trustee.

31 (2) The assets of IRAs established for covered employees must be
32 allocated to the trust and combined for investment purposes. Trust
33 assets must be managed and administered for the exclusive purposes of
34 providing benefits to covered employees and defraying reasonable
35 expenses of administering and maintaining, and managing investments,
36 of the IRAs and the trust, including the expenses of the commissioner
37 under this act.

38 (3) The commissioner shall establish within the trust one or more
39 investment funds, each pursuing an investment strategy and policy

1 established by the commissioner. The underlying investments of each
2 investment fund shall be diversified, to the extent the commissioner
3 determines to be appropriate, so as to minimize the risk of large
4 losses under the circumstances. The commissioner may, at any time and
5 from time to time, add, replace, or remove any investment fund.

6 (4) The commissioner may allow covered employees to allocate
7 assets of their IRAs among such investment funds and in such case,
8 the commissioner also may designate an investment fund as a default
9 investment for the IRAs of covered employees who do not make an
10 investment choice.

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

20 (6) The commissioner may, in its discretion, retain an investment
21 adviser to select and manage the investments of an investment fund on
22 a discretionary basis, subject to the commissioner's ongoing review
23 and oversight.

24 (7) The trustee is subject to directions of the commissioner
25 under subsection (5) of this section or an investment adviser under
26 subsection (6) of this section and otherwise has no responsibility
27 for the selection, retention, or disposition of trust investments or
28 assets.

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

39 (9) The assets of the trust shall at all times be held separate
40 and apart from the assets of the state. None of the state, the

1 program, the commissioner, nor any employer may guaranty any
2 investment, rate of return, or interest on amounts held in the trust,
3 an investment fund, or any IRA. None of the state, the program, the
4 commissioner, or any employer is liable for any losses incurred by
5 trust investments or otherwise by any covered employee or other
6 person as a result of participating in the program except for any
7 liability that arises out of such person's breach of fiduciary duty
8 under section 5 of this act. The state, the program, the
9 commissioner, or any employer is not liable for the payment of
10 benefits earned by participating employees.

11 (10) Any security issued, managed, or invested by the
12 commissioner within the secure choice retirement savings trust on
13 behalf of an individual participating in the program is exempt from
14 RCW 21.20.140.

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

19 (12) If the commissioner determines to exercise his or her
20 discretion under section 4(6) of this act to establish the program by
21 using another state's auto-IRA program, establishing a joint program,
22 or a consortium with one or more other states, then the trust may be
23 established by adopting the trust established under such other
24 state's program or as a master trust or similar arrangement with such
25 other states, provided that such trust, master trust, or similar
26 arrangement otherwise satisfies the requirements of this section.

27 NEW SECTION. **Sec. 9.** (1) If the commissioner determines to
28 exercise his or her discretion under section 4(6) of this act:

29 (a) Only the secure choice retirement savings administrative fund
30 may be used to contract with another state to use that state's
31 program or to create a joint program or consortium with one or more
32 states offering an existing program.

33 (b) The rate of the administrative fee for covered employees may
34 not exceed the rate charged to employees of another state
35 participating in the same program.

36 (2) If the commissioner determines to not exercise his or her
37 authority under section 4(5) of this act, the rate of the
38 administrative fee for covered employees may not exceed one and five-
39 hundredths percent.

1 NEW SECTION. **Sec. 10.** (1) The commissioner may establish a
2 pilot program for covered employers to auto enroll employees into an
3 IRA by January 1, 2021. The commissioner may also provide for a
4 staggered rollout of the program so that covered employers are
5 initially required to offer the program to covered employees in
6 stages based on employee headcount or such other criteria as may be
7 established by the commissioner.

8 (2) The commissioner shall make the secure choice retirement
9 savings program available to all covered employees no earlier than
10 January 1, 2022, and no later than January 1, 2023.

11 NEW SECTION. **Sec. 11.** (1) Any information or records concerning
12 an individual or employer obtained by the commissioner pursuant to
13 the administration of this act shall be private and confidential,
14 except as otherwise provided in this section.

15 (2) If information provided to the commissioner by another
16 governmental agency is held private and confidential by state or
17 federal law, the commissioner may not release such information,
18 unless otherwise provided by this section.

19 (3) Information provided to the commissioner by another
20 governmental entity conditioned upon privacy and confidentiality
21 under a provision of law is to be held private and confidential
22 according to the agreement between the commissioner and the other
23 governmental agency unless otherwise provided by this section.

24 (4) If the commissioner determines to exercise his or her
25 discretion under section 4(5) of this act to establish the program by
26 using another state's auto-IRA program, establishing a joint program,
27 or a consortium with one or more other states, then the laws of the
28 state that is most protective of individual and employer
29 confidentiality shall govern.

30 (5) The commissioner may disclose information or records deemed
31 private and confidential under this chapter to any private person or
32 organization, including the trustee, and by extension, the agents of
33 any private person or organization, when the disclosure is necessary
34 to permit private contracting parties to assist in the operation,
35 management, and implementation of the program. The private person or
36 organization shall use the information or records solely for the
37 purpose for which the information was disclosed and are bound by the
38 same rules of privacy and confidentiality as the commissioner.

1 (6) An individual shall have access to all records and
2 information concerning that individual held by the commissioner
3 unless the information is exempt from disclosure under RCW 42.56.410.

4 (7) An employer shall have access to its own records relating to
5 any audit conducted or penalty assessed by the commissioner under
6 this chapter.

7 (8) No decision by the commissioner or the appeals tribunal shall
8 be deemed private and confidential under this section unless the
9 decision is based on information obtained in a closed hearing.

10 (9) Information or records deemed private and confidential under
11 this section shall be available to parties to judicial or formal
12 administrative proceedings only upon a written finding by the
13 presiding officer that the need for the information or records in the
14 proceeding outweighs any reasons for the privacy and confidentiality
15 of the information or records.

16 (10) Nothing in this chapter shall prevent the disclosure of
17 information or records deemed private and confidential under this
18 section if all details identifying an individual or employer are
19 deleted so long as the information or records cannot be foreseeably
20 combined with other publicly available information to reveal the
21 identity of an individual or employer.

22 (11)(a) All private persons, governmental agencies, and
23 organizations authorized to receive information from the commissioner
24 under this chapter have an affirmative obligation to take all
25 reasonable actions necessary to prevent the disclosure of
26 confidential information.

27 (b) The disclosure of any records or information by a private
28 person, governmental agency, or organization that obtained the
29 records or information from the commissioner under this section is
30 prohibited unless expressly permitted by this section.

31 (c) If misuse or an unauthorized disclosure of confidential
32 records or information occurs, all parties who are aware of the
33 violation must inform the commissioner immediately and must take all
34 reasonably available actions to rectify the disclosure to the
35 commissioner's standards.

36 (d) The misuse or unauthorized release of records or information
37 deemed private and confidential under this chapter by any private
38 person, governmental agency, or organization to which access is
39 permitted by this section shall subject the person, governmental
40 agency, or organization to a civil penalty of up to twenty thousand

1 dollars in the first year of the program and annually adjusted by the
2 commissioner based on changes in the United States consumer price
3 index for all urban consumers. Other applicable sanctions under state
4 and federal law also apply.

5 (e) Suit to enforce this section shall be brought by the attorney
6 general and the amount of any penalties collected shall be paid into
7 the secure choice retirement savings administrative fund established
8 in section 7 of this act. The attorney general may recover reasonable
9 attorneys' fees for any action brought to enforce this section.

10 (12) This section does not contain a rule of evidence.

11 NEW SECTION. **Sec. 12.** (1) A covered employer who fails, without
12 reasonable cause, as defined by the commissioner in rule, to
13 facilitate the enrollment of eligible employees in the program, shall
14 pay a penalty for each employee for each year or portion of a year
15 the employer failed to facilitate the enrollment of the employee. The
16 penalty shall start at two hundred fifty dollars for each employee
17 for which the employer has failed to facilitate the enrollment of the
18 employee for the first year of the program and shall be annually
19 adjusted by the commissioner based on changes in the United States
20 consumer price index for all urban consumers.

21 (2) The commissioner shall have the same rights to collect
22 penalties charged pursuant to this chapter as those contained in
23 chapter 50A.45 RCW, so long as the employer is offered the same
24 rights to appeal any order and notice of assessment as those
25 contained in chapter 50A.50 RCW. The remedies provided in chapter
26 50A.50 RCW for determining the justness or correctness of the
27 penalties charged shall be exclusive and no court shall entertain any
28 action to enjoin an assessment or require a refund or adjustment
29 except in accordance with the provisions of chapter 50A.50 RCW.

30 (3) Penalties charged pursuant to this chapter shall be deposited
31 in the secure choice retirement savings administrative fund
32 established in section 7 of this act.

33 (4) The commissioner shall not assess penalties to covered
34 employers until July 1, 2025.

35 NEW SECTION. **Sec. 13.** (1) The commissioner must develop an
36 implementation plan that details how the employment security
37 department will design, establish, operate, and market the program
38 under sections 2 through 10 of this act.

1 (2) By December 1, 2020, and in compliance with RCW 43.01.036,
2 the commissioner must submit a report to the appropriate committees
3 of the legislature describing the implementation plan.

4 (3) Beginning on December 1st of the first year after fully
5 implementing the program, the commissioner must report annually on
6 administrative fees. The report shall include:

7 (a) A financial update on the status of the secure choice
8 retirement savings administrative fund;

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

11 (c) The uses of administrative fees; and

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

15 NEW SECTION. **Sec. 14.** RCW 43.330.730 (Finding—2015 c 296) is
16 decodified.

17 **Sec. 15.** RCW 43.330.732 and 2015 c 296 s 2 are each amended to
18 read as follows:

19 The definitions in this section apply throughout this subchapter
20 unless the context clearly requires otherwise.

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

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

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

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

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

1 ~~(6)~~) "Participating employer" means any eligible employer with
2 employees enrolled in an approved plan offered through the Washington
3 small business retirement marketplace who chooses to participate in
4 the marketplace and offers approved plans to employees for voluntary
5 enrollment.

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

12 ~~((8))~~ (7) "Qualified employee" means those workers who are
13 defined by the federal internal revenue service to be eligible to
14 participate in a specific qualified plan.

15 ~~((9))~~ (8) "Target date or other similar fund" means a hybrid
16 mutual fund that automatically resets the asset mix of stocks, bonds,
17 and cash equivalents in its portfolio according to a selected time
18 frame that is appropriate for a particular investor. A target date is
19 structured to address a projected retirement date.

20 ~~((10))~~ (9) "Washington small business retirement marketplace"
21 or "marketplace" means the retirement savings program created to
22 connect eligible employers and their employees with approved plans to
23 increase retirement savings.

24 **Sec. 16.** RCW 43.330.735 and 2017 c 69 s 1 are each amended to
25 read as follows:

26 (1) The Washington small business retirement marketplace is
27 created.

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

31 (3) The director shall consult with the Washington state
32 department of retirement systems, the Washington state investment
33 board, and the department of financial institutions in designing and
34 managing the marketplace.

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

38 (5) A range of investment options must be provided to meet the
39 needs of investors with various levels of risk tolerance and various

1 ages. The director must approve a diverse array of private retirement
2 plan options that are available to employers on a voluntary basis,
3 including but not limited to life insurance plans that are designed
4 for retirement purposes, and plans for eligible employer
5 participation such as: (a) A SIMPLE IRA-type plan that provides for
6 employer contributions to participating enrollee accounts; and (b) a
7 payroll deduction individual retirement account type plan or
8 workplace-based individual retirement accounts open to all workers in
9 which the employer does not contribute to the employees' account.

10 (6) (a) Prior to approving a plan to be offered on the
11 marketplace, the department must receive verification from the
12 department of financial institutions or the office of the insurance
13 commissioner:

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

16 (ii) That the plan meets the requirements of this section
17 excluding subsection (9) of this section which is subject to federal
18 laws and regulations.

19 (b) If the plan includes either life insurance or annuity
20 products, or both, the office of the insurance commissioner may
21 request that the department of financial institutions conduct the
22 plan review as provided in (a)(ii) of this subsection prior to
23 submitting its verification to the department.

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

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

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

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

38 (10) The approved plans must include the option for enrollees to
39 roll pretax contributions into a different individual retirement
40 account or another eligible retirement plan after ceasing

1 participation in a plan approved by the Washington small business
2 retirement marketplace.

3 (11) Financial services firms selected by the department to offer
4 approved plans on the marketplace may not charge the participating
5 employer an administrative fee and may not charge enrollees more than
6 one hundred basis points in total annual fees and must provide
7 information about their product's historical investment performance.
8 Financial services firms may charge enrollees a de minimis fee for
9 new and/or low balance accounts in amounts negotiated and agreed upon
10 by the department and financial services firms. The director shall
11 limit plans to those with total fees the director considers
12 reasonable based on all the facts and circumstances.

13 (12) Participation in the Washington small business retirement
14 marketplace is voluntary for both eligible employers and qualified
15 employees.

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

18 **Sec. 17.** RCW 43.79A.040 and 2019 c 448 s 10, 2019 c 363 s 21,
19 2019 c 295 s 225, 2019 c 282 s 7, 2019 c 266 s 26, and 2019 c 157 s 4
20 are each reenacted and amended to read as follows:

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

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

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

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

1 (b) The following accounts and funds must receive their
2 proportionate share of earnings based upon each account's or fund's
3 average daily balance for the period: The 24/7 sobriety account, the
4 Washington promise scholarship account, the Gina Grant Bull memorial
5 legislative page scholarship account, the Washington advanced college
6 tuition payment program account, the Washington college savings
7 program account, the accessible communities account, the Washington
8 achieving a better life experience program account, the community and
9 technical college innovation account, the agricultural local fund,
10 the American Indian scholarship endowment fund, the foster care
11 scholarship endowment fund, the foster care endowed scholarship trust
12 fund, the contract harvesting revolving account, the Washington state
13 combined fund drive account, the commemorative works account, the
14 county enhanced 911 excise tax account, the county road
15 administration board emergency loan account, the toll collection
16 account, the developmental disabilities endowment trust fund, the
17 energy account, the fair fund, the family and medical leave insurance
18 account, the fish and wildlife federal lands revolving account, the
19 natural resources federal lands revolving account, the food animal
20 veterinarian conditional scholarship account, the forest health
21 revolving account, the fruit and vegetable inspection account, the
22 educator conditional scholarship account, the game farm alternative
23 account, the GET ready for math and science scholarship account, the
24 Washington global health technologies and product development
25 account, the grain inspection revolving fund, the Washington history
26 day account, the industrial insurance rainy day fund, the juvenile
27 accountability incentive account, the law enforcement officers' and
28 firefighters' plan 2 expense fund, the local tourism promotion
29 account, the low-income home rehabilitation revolving loan program
30 account, the multiagency permitting team account, the northeast
31 Washington wolf-livestock management account, the pilotage account,
32 the produce railcar pool account, the regional transportation
33 investment district account, the rural rehabilitation account, the
34 Washington sexual assault kit account, the stadium and exhibition
35 center account, the youth athletic facility account, the self-
36 insurance revolving fund, the children's trust fund, the Washington
37 horse racing commission Washington bred owners' bonus fund and
38 breeder awards account, the Washington horse racing commission class
39 C purse fund account, the individual development account program
40 account, the Washington horse racing commission operating account,

1 the life sciences discovery fund, the Washington state library-
2 archives building account, the reduced cigarette ignition propensity
3 account, the center for deaf and hard of hearing youth account, the
4 school for the blind account, the Millersylvania park trust fund, the
5 public employees' and retirees' insurance reserve fund, the school
6 employees' benefits board insurance reserve fund, the public
7 employees' and retirees' insurance account, the school employees'
8 insurance account, the long-term services and supports trust account,
9 the radiation perpetual maintenance fund, the Indian health
10 improvement reinvestment account, the secure choice retirement
11 savings administrative fund, and the library operations account.

12 (c) The following accounts and funds must receive eighty percent
13 of their proportionate share of earnings based upon each account's or
14 fund's average daily balance for the period: The advanced right-of-
15 way revolving fund, the advanced environmental mitigation revolving
16 account, the federal narcotics asset forfeitures account, the high
17 occupancy vehicle account, the local rail service assistance account,
18 and the miscellaneous transportation programs account.

19 (d) Any state agency that has independent authority over accounts
20 or funds not statutorily required to be held in the custody of the
21 state treasurer that deposits funds into a fund or account in the
22 custody of the state treasurer pursuant to an agreement with the
23 office of the state treasurer shall receive its proportionate share
24 of earnings based upon each account's or fund's average daily balance
25 for the period.

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

29 **Sec. 18.** RCW 30B.04.040 and 2019 c 389 s 4 are each amended to
30 read as follows:

31 A person is exempt from the requirement of a certificate of
32 authority or approval under this title if the person is:

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

35 (2) Engaging in business in Washington state (a) as a national
36 banking association or (b) as a federal mutual savings bank, federal
37 stock savings bank, or federal savings and loan association under
38 authority of the office of the comptroller of the currency;

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

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

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

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

15 (7) Acting as trustee under a deed of trust delivered only as
16 security for the payment of money or for the performance of another
17 act;

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

21 (9) Engaging in a commodities or securities transaction or
22 providing an investment advisory service in the capacity of a
23 registered broker-dealer, investment ~~((adviser))~~ adviser, or
24 registered representative thereof, provided the activity is regulated
25 by the department, the United States commodities futures trading
26 commission, or the United States securities and exchange commission;

27 (10) Engaging in the sale and administration of an insurance
28 product by an insurance company or agent licensed by the office of
29 the insurance commissioner to the extent that the activity is
30 regulated by the office of the insurance commissioner;

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

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

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

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

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

8 NEW SECTION. **Sec. 19.** If any part of this act is found to be in
9 conflict with federal requirements that are a prescribed condition to
10 the allocation of federal funds to the state or the eligibility of
11 employers in this state for federal unemployment tax credits, the
12 conflicting part of this act is inoperative solely to the extent of
13 the conflict, and the finding or determination does not affect the
14 operation of the remainder of this act. Rules adopted under this act
15 must meet federal requirements that are a necessary condition to the
16 receipt of federal funds by the state or the granting of federal
17 unemployment tax credits to employers in this state.

18 NEW SECTION. **Sec. 20.** Sections 2 through 13 of this act are
19 each added to chapter 43.330 RCW."

E2SSB 5740 - S AMD 911
By Senator Mullet

ADOPTED 01/17/2020

20 On page 1, line 2 of the title, after "program;" strike the
21 remainder of the title and insert "amending RCW 43.330.732,
22 43.330.735, and 30B.04.040; reenacting and amending RCW 43.79A.040;
23 adding new sections to chapter 43.330 RCW; creating new sections;
24 decodifying RCW 43.330.730; and prescribing penalties."

EFFECT: (1) Replaces the Department of Commerce with the
Employment Security Department as the agency with oversight for the
Secure Choice Program.

(2) 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.

(3) Administrative fees are capped at 1.05 percent.

(4) The administrative account is allowed to run negative for
eight years rather than six.

(5) Requires the program to be designed to operate not to be an
employee benefit plan within the meaning of the federal Employee
Code Rev/KS:roy

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.

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

(7) Provides that if the Employment Security Department 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.

(8) Requires the Employment Security Department 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, 2020.

(9) Requires the Employment Security Department to submit an annual report to the Legislature with an update on: The fiscal status 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.

(10) Authorizes the Secure Choice Retirement Savings Program be open to covered employees beginning January 1, 2022, and no later than January 2, 2023.

(11) Requires the Employment Security Department to enforce employer compliance with the Secure Choice Retirement Savings Plan beginning July 1, 2025.

(12) Clarifies that if any part of the act is in conflict with federal unemployment tax requirements, the remainder of the act remains intact.

(13) Clarifies the privacy of the covered employer and covered employee.

(14) Clarifies that covered employers cannot withhold compensation for the program in lump sums, and must be withheld against compensation in regular intervals.

--- END ---