

# SENATE BILL REPORT

## SB 5740

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As of February 27, 2019

**Title:** An act relating to creating the secure choice retirement savings program.

**Brief Description:** Creating the secure choice retirement savings program.

**Sponsors:** Senators Mullet, Hobbs, Conway and Van De Wege.

**Brief History:**

**Committee Activity:** Financial Institutions, Economic Development & Trade: 2/05/19, 2/14/19 [DPS-WM, DNP].

**Ways & Means:** 2/27/19.

**Brief Summary of First Substitute Bill**

- Requires certain employers to automatically enroll its employees into an individual retirement account in the Secure Choice Retirement Savings Program at the Department of Commerce.

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**SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE**

**Majority Report:** That Substitute Senate Bill No. 5740 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Mullet, Chair; Wilson, L., Ranking Member; Braun, Das and Hobbs.

**Minority Report:** Do not pass.

Signed by Senator Ericksen.

**Staff:** Clint McCarthy (786-7319)

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**SENATE COMMITTEE ON WAYS & MEANS**

**Staff:** Amanda Cecil (786-7460)

**Background:** Washington State Retirement Marketplace. The Small Business Retirement Marketplace was created by the Legislature in 2015. The marketplace is operated by the

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Department of Commerce. Statute requires the marketplace to provide a range of investment options to meet the needs of a diverse population. Options include a simple IRA plan for employer contributions to participating enrollee accounts and payroll deduction IRA type plans, and workplace-based IRAs open to all workers in which the employer does not contribute to the employees account. The state is also directed to offer “myRA”, which was designed to be similar to a Roth IRA, but sponsored by the government. The myRA plan was designed to help low- and middle-income workers who do not have access to a 401(k) or pension at work to start saving for retirement by investing in a risk adverse, interest-bearing account backed by the U.S. Treasury. The U.S. Treasury closed the myRA plan in 2018. Employers are not required to participate in the small business retirement marketplace.

Auto Enroll Retirement Plans. As of early 2019, five states have legislative authority to automatically reenroll employees in state-administered individual retirement accounts. The states with auto enroll IRA plans include California, Connecticut, Illinois, Maryland, and Oregon.

Oregon became the first state to automatically enroll workers without access to a retirement plan when the state launched the OregonSaves Program in July 2018. It took Oregon roughly two years to launch its auto-enroll program and as of December 2018, has \$10M under management. Oregon has capped fees at 105 basis points—\$10.50 for every \$1,000 invested per year. Ascensus, a private financial firm, administers the program.

**Summary of Bill (First Substitute):** Establishes the Secure Choice Retirement Savings Program. The Secure Choice Retirement Savings Program is established within the Department of Commerce (Commerce). The director of Commerce is responsible for the designing, establishing, and operating the program. The director is authorized to collect fees to defray costs of administering the program, and enter into necessary contracts. The director has the authority to determine the types of IRA plans to be offered, as well as the default contribution rate and escalation rate. The director may establish intervals after which a covered employee must reaffirm elections, including opt-out elections with regard to participation or escalation. The director must provide each employer:

- information regarding the program;
- required disclosures to be provided to employees; and
- information, forms, and instructions to be provided to employees

The director must design and operate the program in a manner that will not cause it to be an employee benefit plan as defined by the Employee Retirement Income Security Act of 1974.

Duties of an Employer. A covered employer is required to offer its employees an opportunity to contribute to an IRA established under the program. Employers are required to provide their employees with information on the program as the director requires. Employers must deliver and facilitate information regarding the program, disclosures, and necessary forms available to its employees at such time and in such a manner as determined by the director.

Rights of an Employee. Unless an employee chooses otherwise, they are automatically enrolled in the program and contributions shall be withheld from the covered employee's compensation at a rate determined by the director. The employee may opt out of the program. The employee may also increase or decrease their contribution rate. The

employee's contribution rate shall be increased to a different rate from time to time as established by the director, unless the employee elects not to have such automatic increases apply.

Administrative Fund. The secure choice retirement savings administrative fund is created in the custody of the state treasurer as a non-appropriated account. The fund is used to administer the program, and only the director may authorize expenditures from the account. The account is authorized to maintain a cash deficit for a time period no longer than six years after the implementation of the secure choice retirement savings program. The director must have a spending plan and a fee schedule to discharge any cash deficit by January 1, 2020.

Secure Choice Retirement Savings Trust. The Secure Choice Retirement Savings Trust is created. The Director shall appoint an institution qualified to act as a trustee under section 408 of the Internal Revenue Code. The assets of the IRAs established for employees must be managed and administered for the exclusive purposes of providing benefits to covered employees and defraying reasonable expenses. Within the trust, the director is directed to establish one or more investment funds. The director, in consultation with third party advisors, shall select underlying investments of each investment fund. The underlying investments of each investment fund must be diversified to minimize risk. The director may allow employees to allocate assets of their IRAs among investment funds, and may also designate an investment fund as the default fund. The assets of the trust must at all times be preserved, invested, and expended solely for the purposes of the trust. No property rights shall exist in favor of the state or any covered employer. Trust assets may not be transferred or used by the state for any purpose other than the expenses related to operating the program. The assets of the trust shall at all times be held separate and apart from the assets of the state. Any security issued, managed, or invested by the director within the trust on behalf of an individual participating in the program is exempt from statutes related to the sale or offering of unregistered securities.

Implementation. The director may establish a pilot project to begin by January 1, 2020. The director may also provide for a staggered rollout of the program based on employee headcount or other criteria.

Enforcement. The Employment Security Department has the power and duty to ensure covered employer compliance and may establish fines and appeal procedures by rule. The maximum fine for a covered employer may not exceed \$250. Covered employers are not subject to complaints, inquiries, or civil penalties until one year following the rollout of the program.

Washington State Retirement Marketplace. The term myRA is removed as a defined term in the Washington State Retirement Marketplace statutes. The marketplace is no longer required to offer myRA.

**EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE COMMITTEE (First Substitute):** Small businesses with five employees or less are exempt from this act. Businesses that are less than five years old are exempt from this act. The client employer is the employer of record for the purposes of the secure choice retirement saving program. The fiduciary responsibility is separated from

the exemption from liability for losses covered employees may experience due to changes in the market.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute (Financial Institutions, Economic Development & Trade):** *The committee recommended a different version of the bill than what was heard.* PRO: The securities industry does not offer retirement plans for low income earning jobs. An investment company needs to have \$5,000 under management to start making money. None of the major brokerages are in our marketplace. The industry supported the marketplace legislation, but they have not supported the marketplace by having competitive plans available. \$18,000 is the average amount that people get from social security, yet those on social security spend \$20,000 a year. Social Security was never meant to be the only income stream that one will need in retirement. There needs to be a way for everyone to save money through their workplace. Attention needs to be given to the fee structure so that the fees continue to go down for its investors. The creation of the small business retirement marketplace was a step forward, but steps need to be taken so that more employers are providing opportunities for their employees to save. This bill provides a reasonable way to help employers assist their employees save for retirement. Some small companies can not afford to administer a savings plan and are at a competitive disadvantage to larger employers who have the ability to offer retirement benefits. Over 2 million people can not save for retirement in their place of work in Washington State. Fewer than 100 employers are participating in the current retirement marketplace. This bill is a step forward.

CON: 40 states have looked at these programs, 35 have rejected it. Four states are trying to figure out how to make it work. Only one state has started a program. The Retirement Enhancement Savings Act is being encouraged at the federal level. No state has approved an auto IRA plan since 2016. California's auto enroll IRA plan is being challenged in Court due to ERISA concerns. The federal safe harbor was repealed by rule in 2017. There are too many people that are not committed to saving for retirement, but this proposal is a dramatic departure from the voluntary marketplace operated through the Department of Commerce. An auto enroll program is premature. Far too few employers are aware of the small business retirement marketplace. An auto enroll IRA plan adds more requirements of small businesses.

OTHER: This is thoughtful consideration of a real problem. If people cannot live off of what they save, we have a societal problem. This bill is not going to meet its mark for what it is aiming to do. Successful models of retirement are a three legged stool: social security, savings, and a defined benefit plan. We are missing an employer based define benefit program.

**Persons Testifying (Financial Institutions, Economic Development & Trade):** PRO: Senator Mark Mullet, Prime Sponsor; John Burbank, Economic Opportunity Institute; Julia Gorton, Washington Hospitality Association; Travis Rosenthal, Tango Restaurant; Erik Strom, Russell Investments; Cathy MacCaul, AARP.

CON: John Mangan, American Council of Life Insurers; Mel Sorensen, National Association of Insurance and Financial Advisors; Patrick Connor, NFIB.

OTHER: Matt Zuvich, Washington Federation of State Employees; Troy Nichols, National Association of Professional Employer Organizations.

**Persons Signed In To Testify But Not Testifying (Financial Institutions, Economic Development & Trade):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: Oregon spent \$10 million to get its program up and running and Washington is able to take advantage of that investment. Employees can opt out. Retirement is important as are the resources and opportunities this bill provides. Minorities and women are disproportionately impacted by failing to save for retirement. The costs of this program are reasonable relative to the benefit.

CON: The voluntary program has not been as successful as planned. More should be done to figure out how to bolster that program. The costs in the fiscal note are understated and the state will have to back fill the cost with appropriations. We do not need another agency to compete with agents and advisers. Teaching more financial literacy in high schools would be a better way to go.

OTHER: Small business are already overwhelmed with state law and initiative requirements. Employees ask the employers why they are taking so much out of their paychecks. This imposes big penalties on employers but does not provide for enough support and outreach.

**Persons Testifying (Ways & Means):** PRO: Senator Mark Mullet, Prime Sponsor; Erik Strom, Russell Investment; Cathy MacCaul, AARP; Julia Gorton, Washington Hospitality Association.

CON: Mel Sorensen, American Council of Life Insurers; Wayne Lunday, National Association of Insurance and Financial Advisors.

OTHER: Gary Smith, Independent Business Association; Patrick Connor, NFIB.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.