CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 6069**

68th Legislature

2024 Regular Session

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| Passed by the Senate March 7, 2024  Yeas 35 Nays 12  **President of the Senate**  Passed by the House March 6, 2024  Yeas 55 Nays 41  **Speaker of the House of Representatives** | CERTIFICATE  I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6069** as passed by the Senate and the House of Representatives on the dates hereon set forth.  Secretary |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED SUBSTITUTE SENATE BILL 6069**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2024 Regular Session

**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Mullet, Valdez, Hunt, Liias, Nguyen, Saldaña, and Van De Wege; by request of State Treasurer)

AN ACT Relating to improving private Washington workforce retirement security standards by establishing Washington saves, an automatic enrollment individual retirement savings account program, and updating the Washington retirement marketplace statute; amending RCW 43.330.732 and 43.330.735; reenacting and amending RCW 43.79A.040 and 43.79A.040; adding a new chapter to Title 19 RCW; creating a new section; decodifying RCW 43.330.730; prescribing penalties; providing effective dates; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**PART I**

**WASHINGTON SAVES**

NEW SECTION. **Sec.**  ESTABLISHMENT. (1) Washington saves is established to serve as a vehicle through which covered employees may, on a voluntary basis, provide for additional retirement security through a state-facilitated retirement savings program in a convenient, cost-effective, and portable manner.

(2) Washington saves is intended as a public-private partnership that will encourage, not replace or compete with, employer-sponsored retirement plans.

(3) Washington saves must be designed in consultation with covered employers and covered employees to ensure that the businesses and workers intended to benefit from the program are provided ample opportunity to learn about and give input on the program design and timeline for implementation before the program is made publicly available.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrative account" means the Washington saves administrative treasury trust account created in section 11 of this act.

(2) "Administrative agency" means the state agency or office that will provide administrative support to the governing board, beginning no later than July 1, 2027.

(3) "Complainant" means a covered employee, or that employee's designee who has written or legal authority to act on behalf of the employee, who files a complaint alleging an employer administrative violation of section 3 of this act who learned of the alleged violation by way of their employment with a covered employer.

(4) "Consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle area as calculated by the United States bureau of labor statistics or its successor agency.

(5) "Covered employee" means an individual who is 18 years of age or older, who is employed by a covered employer.

(6) "Covered employer" means any employer that:

(a) Has been in business in this state for at least two years as of the immediately preceding calendar year;

(b) Maintains a physical presence;

(c) Does not offer a qualified retirement plan to their covered employees who have had continuous employment of one year or more; and

(d) Employs, and at any point during the immediately preceding calendar year employed, employees working a combined minimum of 10,400 hours.

(7) "Department" means the department of labor and industries.

(8) "Employer" means a person or entity engaged in a business, profession, trade, or other enterprise in the state, whether for profit or not for profit. "Employer" does not include federal or state entities, agencies, or instrumentalities, or any political subdivision thereof.

(9) "Employer administrative duties" include all requirements of covered employers under section 3 of this act that do not involve amounts due to the employee.

(10) "Employment" has the same meaning as in RCW 50.04.100.

(11) "Governing board" means the board created in section 4 of this act.

(12) "Individual account" means an IRA established by or for an individual participant and owned by the individual participant pursuant to this chapter.

(13) "Individual participant" means any individual who is contributing to, or has a balance credited in, an IRA through the program.

(14) "Internal revenue code" means the federal internal revenue code of 1986, as amended, or any successor law.

(15) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity described in section 408(a), 408(b), or 408A of the internal revenue code.

(16) "Payroll deduction IRA agreement" means an arrangement by which a participating employer makes payroll deductions authorized by this chapter and remits amounts deducted as contributions to IRAs on behalf of individual participants.

(17) "Program" means the Washington saves program established under this chapter.

(18) "Qualified retirement plan" means a retirement plan in compliance with applicable federal law for employees including those described in section 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of the internal revenue code. A qualified retirement plan may require continuous employment of up to one year to be eligible for employee participation.

(19) "Wages" means any commission, compensation, salary, or other remuneration, as defined by section 219(f)(1) of the internal revenue code, received by a covered employee from a covered employer.

NEW SECTION. **Sec.**  GENERAL PROVISIONS. (1) The program:

(a) Allows covered employees to contribute to an IRA through automatic payroll deductions or additional retirement savings vehicles;

(b) Requires covered employers to fulfill the requirements provided in subsection (3) of this section;

(c) Facilitates automatic enrollment for covered employees and allows for covered employees to opt out of the plan at any time;

(d) Has a default contribution rate, set by the governing board by rule. The default contribution rate may not be less than three percent or more than seven percent of wages; and

(e) Has a default escalation rate, set by the governing board by rule. The default escalation rate may not exceed one percent per year. The maximum contribution rate based on the default escalation rate may not exceed 10 percent of wages.

(2)(a) Covered employees, who do not opt out of the program, are automatically enrolled in the program at the default rate or at an amount expressly specified by the employee in connection with the payroll deduction IRA agreement. Individual participants may modify their contribution rates or amounts or terminate their participation in the program at any time, subject to procedure defined by rule by the governing board. All contribution amounts are subject to the dollar limits on contributions provided by federal law.

(b) Contributions must be invested in the default investment option unless the individual participant affirmatively elects to invest some or all balances in one or more approved investment options offered by the program. An individual participant must have the opportunity to change investments for either future contributions or existing balances, or both, subject to requirements defined by rule by the governing board.

(c) Individual accounts are portable. A former individual participant who is either unemployed, or is employed by a noncovered employer, must be permitted to contribute to their individual account.

(d) An individual participant's and former individual participant's ability to withdraw, roll over, or transfer account balances is subject to, and liable for, all fees, penalties, and taxes under applicable law.

(e) An individual participant's or former individual participant's ability to receive distributions of contributions and earnings is subject to applicable law.

(3)(a) Each covered employer must facilitate the opportunity for covered employees to participate in the program by fulfilling the following administrative duties, as defined by rule by the governing board:

(i) Register with the program and provide the program administrator relevant information about covered employees;

(ii)(A) Assist the program by offering all covered employees the choice to either participate by voluntarily contributing to an IRA or opt out; or

(B) Automatically enroll covered employees in a qualified retirement plan offered by a trade association or chamber of commerce and permit covered employees to opt out;

(iii) Timely remit participant contributions; and

(iv) Distribute program information and disclosures to covered employees, as provided in section 4(14) of this act.

(b) The employers' role in the program is solely ministerial. In accordance with federal law, employers are prohibited from contributing funds to the IRAs through the program.

(c) Employers are not fiduciaries with respect to, or are liable for, the program, related information, educational materials, or forms or disclosures approved by the governing board, or the selection or performance of vendors selected by the governing board. An employer is not responsible for or obligated to monitor a covered employee's or individual participant's decision to participate in or opt out of the program, for contribution decisions, investment decisions, or failure to comply with the statutory eligibility conditions or limits on IRA contributions. An employer does not guarantee any investment, rate of return, or interest on assets in any individual participant account or the administrative account or is liable for any market losses, failure to realize gains, or any other adverse consequences, including the loss of favorable tax treatment or public assistance benefits, incurred by any person as a result of participating in the program. Nothing in this section relieves an employer from liability for criminal, fraudulent, tortious, or otherwise actionable conduct including liability related to the failure to remit employee contributions.

(4)(a) The governing board must determine the type or types of IRA accounts available under the program.

(b) An individual participant's contributions and earnings may be combined for investment and custodial purposes only. Separate records and accounting are required for individual accounts. Reports on the status of individual accounts must be provided to each individual participant at least annually. Individual participants must have online access to their accounts.

(c) Any moneys placed in these accounts may not be counted as assets for the purposes of state or local means-tested program eligibility or levels of state means-tested program eligibility.

NEW SECTION. **Sec.**  GOVERNING BOARD—RESPONSIBILITIES. (1) The governing board shall design and administer the program for the exclusive benefit of individual participants and beneficiaries with the care and skill of a knowledgeable, prudent individual.

(2) The governing board is comprised of 15 members as follows:

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The state treasurer;

(d) The director of the department or the director's designee; and

(e) The following members representing the diversity and geography of the state, appointed by the governor:

(i) One member representing the securities industry;

(ii) One member representing the insurance industry;

(iii) One member who is a certified financial planner recommended by the national association of insurance and financial advisors of Washington;

(iv) One member representing the interests of small, independent businesses in Washington;

(v) One member representing the interests of minority-owned and women-owned businesses in Washington;

(vi) One member representing the Washington asset building coalition;

(vii) One member representing a retirement advocacy organization;

(viii) One member representing covered employees; and

(ix) One member representing covered employers.

(3)(a) The legislative member from the majority caucus of the house of representatives shall convene the initial meeting of the governing board. The governing board shall choose cochairs selected from the legislative membership for the design stage of the program until July 1, 2027. The governing board shall provide recommendations in the legislative report about who should be the chair of the governing board once the program is operational after July 1, 2027.

(b) After July 1, 2027, the legislative members of the governing board serve in an ex officio, advisory role to the governing board.

(4) Members who are appointed by the governor serve three-year terms and may be appointed for a second three-year term at the discretion of the governor. Members who are appointed by the governor may serve up to two terms over the course of their lifetime. The governor may stagger the terms of the appointed members.

(5) The governing board may appoint work groups to support the design and administration of the program. Work groups do not serve a voting function on the governing board and may include individuals who are not members of the governing board. Any work group established by the governing board is a class one group under RCW 43.03.220. Work group members receive compensation accordingly.

(6) Other state agencies must provide appropriate and reasonable assistance to the program as needed, including gathering data and information, in order for the governing board to carry out the purposes of this chapter. The governing board may reimburse the other state agencies from the administrative account for reasonable expenses incurred in providing appropriate and reasonable assistance.

(7)(a) The governing board must begin meeting in 2025.

(b) The governing board may conduct meetings remotely by teleconference or videoconference, including to obtain a quorum and to take votes on any measure.

(c) Each voting governing board member has one vote. The powers of the governing board must be exercised by a majority of all voting members present at the meeting of the governing board, whether in person or remotely. A quorum is required to convene a meeting of the governing board and to act on any measure before the governing board.

(8) The governing board shall establish, design, develop, implement, maintain, and oversee the program in accordance with this chapter and best practices for retirement saving vehicles.

(9) Staff support for the governing board shall be provided by:

(a) The department of financial institutions, until no later than June 30, 2027. The department of financial institutions may contract with a third-party entity to provide assistance or expertise during the program outreach and education, design, and implementation stage if approved by the governing board; and

(b) The administrative agency, beginning no later than July 1, 2027.

(10) The governing board shall conduct an outreach and education initiative regarding the design and implementation of the program. The governing board shall consult, educate, and receive feedback from covered employers and covered employees regarding the program design and implementation. The outreach and education initiative must ensure that diverse employer and employee communities are consulted, that interpreters are provided, and that written documents and materials are translated. In order to facilitate accessibility for diverse affected businesses and employees, the governing board shall work with the various state commissions to develop culturally and linguistically responsive outreach and education plans.

(11) Regarding investments, the governing board:

(a) Has the sole responsibility for contracting with outside firms to provide investment management for the program funds and manage the performance of investment managers under those contracts;

(b) Must adopt an investment policy statement and ensure that the investment options offered, including default investment options, are consistent with the objectives of the program. The menu of investment options may encompass a range of risk and return opportunities and must take the following into account:

(i) The nature and objectives of the program;

(ii) The diverse needs of individual participants;

(iii) The desirability of limiting investment choices under the program to a reasonable number; and

(iv) The extensive investment choices available to participants outside of the program.

(12) Regarding the design of the program, the governing board must:

(a) Ensure the program is designed and operated in a manner that will not cause it to be subject to or preempted by the federal employment retirement income security act of 1974, as amended, and that any employer that is not a covered employer shall have no reporting or registration obligation or requirement to take any action under the program other than to claim an exemption from coverage by the program;

(b) Design and operate the program to:

(i) Minimize costs to individual participants, covered employers, and the state;

(ii) Minimize the risk that covered employees will exceed applicable annual contribution limits;

(iii) Facilitate and encourage employee participation in the program and participant saving;

(iv) Maximize simplicity, including ease of administration for covered employers and ease of use for individual participants;

(v) Provide a simple process for covered employees to opt out of the
program at any time or modify their payroll deductions;

(vi) Maximize portability of individual accounts;

(vii) Maximize financial security in retirement; and

(viii) Maximize the availability of funds to individual participants with a goal of having funds available within three business days following the remittance of payroll deductions by covered employers, if feasible;

(c) Design the program to be compliant with all applicable requirements under the internal revenue code, including requirements for favorable tax treatment of IRAs, and any other applicable law or regulation;

(d) Consult with the department of financial institutions, the department, the office of minority and women's business enterprises, and the office of the secretary of state to create a strategy to educate and inform covered employers about employer administrative duties under this chapter, including the development of culturally relevant and responsive approaches centered in cultural humility with outreach to employers that are considered socially vulnerable, historically marginalized, or face cultural or language barriers to participate in workplace retirement savings programs;

(e) Launch the program by July 1, 2027. The board may stagger implementation in stages after that date, which may include phasing in implementation based on the size of employers, or other factors.

(13) The governing board may adopt rules to govern the program, including to govern the following:

(a) Employee registration and enrollment process;

(b) Employee alternative election procedure including, but not limited to, the method in which a participating individual may opt out of participation at any time, change their contribution rate, opt out of auto-escalation, make nonpayroll contributions, and make withdrawals;

(c) Contribution limits, the initial automatic default contribution rate, and the automatic default escalation rate;

(d) Outreach, marketing, and educational initiatives or publication of online resources, encouragement of participation, retirement savings, and sound investment practices. Outreach, marketing, and educational initiatives must promote cultural humility and engage culturally relevant and responsive approaches while including special consideration for socially vulnerable communities historically, or are known to often be, excluded from, marginalized by, or face barriers to participation in workplace retirement savings programs; and

(e) A process in which individuals who are not covered employees may participate in the program, including unemployed individuals, self-employed individuals, and other independent contractors.

(14) The governing board shall develop:

(a) Information regarding the program;

(b) The following disclosures:

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

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

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

(iv) A statement that covered employees seeking financial advice should contact their own financial advisers, that covered employers are not in a position to provide financial advice, and that covered employers are not liable for decisions covered employees make under this chapter;

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

(vi) A statement that the covered employee's IRA established under the program is not guaranteed by the state;

(vii) A statement that the program is voluntary for covered employees, and a covered employee may opt out of the program at any time; and

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

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

(i) Making contributions to the covered employee's IRA established under the program, including a description of the automatic enrollment rate, the automatic escalation rate and frequency, the right to elect to make no contribution or to change the contribution rate under the program, and how to opt out of the program at any time;

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

(iii) Making transfers, rollovers, withdrawals including instructions on how to access funds, and other distributions from the covered employee's IRA.

(15) The governing board must evaluate options to assist covered employees and employers to identify private sector providers of financial advice, to the extent feasible and unless prohibited by state or federal laws. The governing board must consider options including, but not limited to, a website established and maintained by the governing board.

(16) The governing board may create or enter into, on behalf of the program, a consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or boards.

(17) The governing board must collect administrative fees to defray the costs of administering the program. If the governing board creates or enters into a joint program agreement, as provided in subsection (16) of this section, the rate of the administrative fee for covered employees may not exceed the rate charged to covered employees of another state participating in the same program.

(18) The governing board, its members, and the administrative agency are not individually or collectively insurers of the funds or assets of the investment fund or individual accounts. Neither the governing board nor the administrative agency is liable for the action or inaction of the other.

(19) The governing board, its members, and the administrative agency are not individually or collectively liable to the state, to the fund, or to any other person as a result of their activities as members or staff, whether ministerial or discretionary, except for willful dishonesty or intentional violation of law. The governing board, its members, and the administrative agency may purchase liability insurance.

(20) The governing board shall submit progress reports to the appropriate committees of the legislature, in accordance with RCW 43.01.036.

(a) The first preliminary report is due December 1, 2025, and must include feedback to the legislature on the proposed timeline set forth under this chapter and progress on outreach initiatives and program implementation.

(b) The final report on program design and implementation recommendations is due December 1, 2026, and must include the following:

(i) A comprehensive summary of outreach activities conducted by the governing board to receive feedback on design elements and implementation for the program, including:

(A) Types of outreach conducted;

(B) Specific calendar dates and time frames in which outreach occurred;

(C) Covered employers and covered employees who were contacted;

(D) Subject matters discussed regarding the program and proposed program structure;

(E) The types of retirement account programs covered employers and covered employees preferred;

(F) Explanations of concerns received during the outreach activities and how those concerns were addressed;

(ii) Recommendations on whether the legislature should make changes to the program's structure or whether any statutory changes need to occur; and

(iii) Recommendations regarding the governing board structure, including who should chair the governing board and what entity should serve as the administrative agency that provides staff support to the governing board once the program is established and operational. The governing board shall consider a potential new agency, an existing state agency, or the office of a stand-alone statewide elected official for the administrative agency.

(c) Annual reports including program updates and program information must begin December 1, 2028, and include information on:

(i) Participation;

(ii) Account performance;

(iii) Board decisions; and

(iv) Any recommendations to the legislature regarding the program.

(21) The governing board may consult with the state investment board and the department of financial institutions regarding program design and implementation.

(22) The governing board shall assure any administrative contract services for the program provide culturally responsive and relevant supports rooted in cultural humility while including special considerations for socially vulnerable communities historically, or are known to often be, excluded from, marginalized by, or face barriers to participation in workplace retirement savings programs.

NEW SECTION. **Sec.**  INVESTMENT MANAGER—RESPONSIBILITIES. (1)(a) After consultation with the governing board, the investment manager may invest funds associated with the program. The investment manager, after consultation with the governing board regarding any recommendations, must provide a set of options for eligible individuals to choose from for self-directed investment. Any self-directed investment options must comply with the internal revenue code.

(b) All investment and operating costs of the investment manager associated with making self-directed investments must be paid by participants and recovered under procedures agreed to by the governing board and the investment manager. All other expenses caused by self-directed investments must be paid by the participant in accordance with the rules established by the governing board. With the exception of these expenses, all earnings from self-directed investments accrue to the individual accounts.

(2) The investment manager must invest and manage the assets entrusted to it:

(a) With reasonable care, skill, prudence, and diligence under circumstances then prevailing which a prudent person acting in a like capacity and familiar with such matters would use to conduct of an activity of like character and purpose; and

(b) In accordance with the investment policy established by the governing board.

(3) The authority to establish all policies relating to implementation, design, and management of the program resides with the governing board.

(4) The investment manager must routinely consult and communicate with the governing board on the investment policy, performance of the accounts, and related needs of the program.

NEW SECTION. **Sec.**  LABOR AND INDUSTRIES—RESPONSIBILITIES. (1) The department has the following responsibilities related to covered employers, as provided in this chapter:

(a) Educate participating employers of their administrative duties under this chapter;

(b) In the case of noncompliance with employer administrative duties, investigate complaints, educate employers about how to come into compliance, and, in the case of willful violations, issue citations and collect penalties;

(c) In the case of impermissible withholding of amounts due to employees, investigate and enforce the complaint as an alleged violation of a wage payment requirement, as defined in RCW 49.48.082; and

(d) Facilitate a process in which employers may appeal complaints.

(2) Collections of unpaid citations assessing civil penalties by the department under this chapter must be made pursuant to RCW 49.48.086.

NEW SECTION. **Sec.**  LABOR AND INDUSTRIES—COMPLIANCE WITH EMPLOYER ADMINISTRATIVE DUTIES. (1) Covered employers shall comply with employer administrative duties provided under this chapter.

(2) If a complainant files a complaint with the department alleging any administrative violation, the department shall investigate the complaint and:

(a) If the complaint is filed before January 1, 2030, offer technical assistance to the employer to bring them into compliance. Civil penalties may not be assessed before January 1, 2030;

(b) If the complaint is filed on or after January 1, 2030, educate the employer on how to come into compliance and, if necessary and as provided in this section, enforce penalties for willful violations.

(3) The department may not investigate any alleged violation of rights that occurred more than three years before the date that the complainant filed the complaint.

(4)(a) If the department finds an employer administrative violation, the department must first provide an educational letter outlining the violations and provide 90 days for the employer to remedy the violations. The employer may ask for an extension for good cause. The department may extend the period by providing written notice to the employee and the employer, specifying the duration of the extension. If the employer fails to remedy the violation within 90 days, the department may issue a citation and notice of assessment with a civil penalty.

(b) Except as provided otherwise in this chapter, the maximum penalty for a first-time willful violation is $100 and $250 for a second willful violation. For the purposes of this section, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute. For each subsequent willful violation, the employer is subject to a maximum penalty amount of $500 for each violation.

(c) The department may not assess a civil penalty if the employer reasonably relied on: (i) A rule related to any of the requirements of this chapter; (ii) a written order, ruling, approval, opinion, advice, determination, or interpretation of the director of the department; or (iii) an interpretive or administrative policy issued by the department and filed pursuant to chapter 34.05 RCW. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department shall maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b) of this subsection.

(5) The department may, at any time, waive or reduce a civil penalty assessed under this section if the director of the department determines that the employer has taken corrective action to resolve the violation.

(6) The department shall deposit all civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

NEW SECTION. **Sec.**  LABOR AND INDUSTRIES—ADMINISTRATIVE CITATION APPEALS. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment by the department under this chapter may appeal the citation and notice of assessment to the director of the department by filing a notice of appeal with the director within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director of the department under this section must state the effectiveness of the citation and notice of assessment pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director of the department must assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures must be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment must be de novo. Any party who seeks to challenge an initial order must file a petition for administrative review with the director within 30 days after service of the initial order. The director must conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director of the department must issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this section within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION. **Sec.**  LABOR AND INDUSTRIES—ENFORCEMENT OF AMOUNTS DUE. (1) Employers may not impermissibly withhold any amounts due to the employee related to the employer's obligations under section 3 of this act. If any employee files a complaint with the department alleging that the employer impermissibly withheld any amounts due to the employee related to the employer's obligations under section 3 of this act, the department shall investigate and otherwise enforce the complaint as an alleged violation of a wage payment requirement, as defined in RCW 49.48.082.

(2) During an investigation, if the department discovers information suggesting additional violations of impermissibly withheld amounts due to the employees related to the employer's obligations under section 3 of this act, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more employees for any such violation when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged withheld amounts due to the employees related to the employer's obligations under section 3 of this act when there are common questions of law or fact involving the employees. If the department consolidates such matters into a single investigation, it shall provide notice to the employer.

(4) The department may, for the purposes of enforcing this section, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may require the employer perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. The department must specify the timelines in the self-audit request. The records examined by the employer in order to perform the self-audit must be made available to the department upon request.

(5) Any citation or determination of compliance issued under this section is subject to RCW 49.48.083, 49.48.084, 49.48.085, and 49.48.086.

NEW SECTION. **Sec.**  PRIVATE AND CONFIDENTIAL INFORMATION. (1) Any information or records concerning an individual or employer obtained by the administrative agency or the governing board to administer this chapter are private and confidential, except as otherwise provided in this section.

(a) If information provided to the administrative agency or the governing board by a governmental agency is held private and confidential by state or federal law, the administrative agency and the governing board may not release such information, unless otherwise provided in this section.

(b) Information provided to the administrative agency or the governing board by a governmental entity conditioned upon privacy and confidentiality under a provision of law is to be held private and confidential according to the agreement between the administrative agency or the governing board and the other governmental agency, unless otherwise provided in this title.

(2) Persons requesting disclosure of information held by the administrative agency or the governing board under this section must request such disclosure from the governmental agency that provided the information to the administrative agency or the governing board, rather than from the administrative agency or the governing board.

(3) If the governing board creates or enters into, on behalf of the program, a consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or boards, the laws of the state that is most protective of individual and employer confidentiality governs.

(4) The governing board has the authority to adopt, amend, or rescind rules interpreting and implementing this chapter.

(5)(a) An individual must have access to all records and information concerning that individual held by the administrative agency or the governing board.

(b) An employer must have access to its own records relating to their compliance with the program and any audit conducted or penalty assessed under this chapter.

(c) The administrative agency or the governing board may disclose information and records deemed confidential under this chapter to a third party acting on behalf of an individual or employer that would otherwise be eligible to receive records under this section when the administrative agency or the governing board receives a signed release from the individual or employer. The release must include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) The acknowledgment that state government files will be assessed to obtain that information;

(iii) The specific purpose for which the information is sought and a statement that information obtained under the release will only be used for that purpose; and

(iv) Indicating all parties who will receive the information disclosed.

(d) The administrative agency or the governing board may disclose information or records deemed private and confidential under this chapter to any private person or organization, including the trustee, and, by extension, the agents of any private person or organization, when the disclosure is necessary to permit private contracting parties to assist in the operation, management, and implementation of the program. The private person or organization may only use the information or records solely for the purpose for which the information was disclosed and are bound by the same rules of privacy and confidentiality as the administrative agency and the governing board.

(6)(a) A decision under this chapter by the administrative agency, the department, the governing board, or the appeals tribunal may not be deemed private and confidential under this section, unless the decision is based on information obtained in a closed hearing.

(b) Information or records deemed private and confidential under this section must be available to parties to judicial or formal administrative proceedings only upon a written finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information on record.

(7)(a) All private persons, governmental agencies, and organizations authorized to receive information from the administrative agency or the governing board under this chapter have an affirmative duty to prevent unauthorized disclosure of confidential information and are prohibited from disclosing confidential information unless expressly permitted by this section.

(b) If misuse of an unauthorized disclosure of confidential records or information occurs, all parties who are aware of the violation must inform the administrative agency immediately and must take all reasonable available actions to rectify the disclosure to the administrative agency standards.

(c) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person, governmental agency, or organization will subject the person, governmental agency, or organization to a civil penalty of up to $20,000 in the first year of the program. Beginning in December of the second year of the program and each December thereafter, the administrative agency must adjust the maximum civil penalty amount by multiplying the current maximum civil penalty by one plus the percentage by which the most current consumer price index available on December 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest $1,000. If an adjustment under this subsection (7)(c) would reduce the maximum civil penalty, the administrative agency must not adjust the maximum civil penalty for use in the following year. Other applicable sanctions under state and federal law also apply.

(d) Suit to enforce this section must be brought by the attorney general and the amount of any penalties collected must be paid into the administrative account created in section 11 of this act. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section.

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

NEW SECTION. **Sec.**  WASHINGTON SAVES ADMINISTRATIVE TREASURY TRUST ACCOUNT. (1) The Washington saves administrative treasury trust account is created in the custody of the state treasurer.

(2) Expenditures from the account may be used only for the purposes of administrative and operating expenses of the program established under this chapter.

(3) Only the director of the administrative agency or the director's designee may authorize expenditures from the account. The account is exempt from appropriation and allotment provisions under chapter 43.88 RCW.

(4) The account may receive grants, gifts, or other moneys appropriated for administrative purposes from the state and the federal government.

(5) Any interest incurred by the account will be retained within the account.

NEW SECTION. **Sec.**  INVESTMENT ACCOUNT. (1) The Washington saves investment account is established as a trust, with the governing board created under this chapter as its trustee.

(2)(a) Moneys in the account consist of moneys received from individual participants and participating employers pursuant to automatic payroll deductions and contributions to savings made under this chapter. The governing board shall determine how the account operates, provided that the account is operated so that the individual accounts established under the program meet the requirements for IRAs under the internal revenue code.

(b) The assets of the account are not state money, common cash, or revenue to the state. Amounts in the account may not be commingled with state funds and the state has no claim to or against, or interest in, such funds.

(3) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. An appropriation is not required for expenditures.

(4) Only the governing board or the governing board's designee may authorize expenditures from the account.

**PART II**

**RETIREMENT MARKETPLACE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The director shall approve for participation in the marketplace all private sector financial services firms ((~~that meet the requirements of~~)), as defined in RCW 43.330.732((~~(7)~~)).

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART III**

**WASHINGTON SAVES – ADMINISTRATIVE ACCOUNT – RETAIN OWN INTEREST**

**Sec.**  RCW 43.79A.040 and 2023 c 389 s 8, 2023 c 387 s 2, 2023 c 380 s 6, 2023 c 213 s 9, 2023 c 170 s 19, and 2023 c 12 s 2 are each reenacted and amended to read as follows:

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

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

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

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

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the behavioral health loan repayment program account, the Billy Frank Jr. national statuary hall collection fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation account, the medication for people living with HIV rebate revenue account, the homeowner recovery account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the pollution liability insurance program trust account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, the Washington saves administrative treasury trust account, and the library operations account.

(c) The following accounts and funds must receive 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

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

**Sec.**  RCW 43.79A.040 and 2023 c 389 s 8, 2023 c 387 s 2, 2023 c 380 s 6, 2023 c 213 s 9, and 2023 c 12 s 2 are each reenacted and amended to read as follows:

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

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

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

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

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the behavioral health loan repayment program account, the Billy Frank Jr. national statuary hall collection fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation account, the medication for people living with HIV rebate revenue account, the homeowner recovery account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, the Washington saves administrative treasury trust account, and the library operations account.

(c) The following accounts and funds must receive 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

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

**PART IV**

**MISCELLANEOUS**

NEW SECTION. **Sec.**  Section 16 of this act expires July 1, 2030.

NEW SECTION. **Sec.**  (1) Section 16 of this act takes effect July 1, 2024.

(2) Section 17 of this act takes effect July 1, 2030.

NEW SECTION. **Sec.**  Sections 1 through 12 of this act constitute a new chapter in Title 19 RCW.

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

**--- END ---**