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**ENGROSSED SUBSTITUTE SENATE BILL 5826**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Mullet and Benton)

AN ACT Relating to creating the Washington small business retirement marketplace; adding new sections to chapter 43.330 RCW; adding a new section to chapter 43.320 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that there is a retirement savings access gap in Washington; that Americans reach the median salary four years later than they did in 1980 and therefore have four fewer years of savings opportunities; and that one in six Americans retire in poverty. Employees who are unable to effectively build their retirement savings risk living on low incomes in their elderly years and are more likely to become dependent on state services. Further, small businesses, which employ more than forty percent of private sector employees in Washington, often choose not to offer retirement plans to employees due to concerns about costs, administrative burdens, and potential liability that they believe such plans would place on their business. In response, the legislature recognizes the work of the federal government in addressing these issues by establishing the myRA program: A safe, affordable, and accessible retirement vehicle designed to remove barriers to retirement savings. In addition, the legislature recognizes that many private financial services firms in Washington currently offer high quality retirement options for small businesses and their employees.

The Washington small business retirement marketplace is the most effective, efficient, and sustainable way to promote increased retirement savings in the state of Washington. The Washington small business retirement marketplace will remove barriers to entry into the retirement market for small businesses by educating small employers on plan availability and promoting, without mandated participation, qualified, low-cost, low-burden retirement savings vehicles and myRA. The marketplace furthers greater retirement plan access for the residents of Washington while ensuring that individuals participating in these retirement plans will have all the protections offered by the employee retirement income security act. Further, the Washington small business retirement marketplace will not pose any significant financial burden upon taxpayers. The Washington small business retirement marketplace will be the best way for Washington to close the retirement savings access gap, protect the fiscal stability of the state and its citizens well into the future, and further cement its place as a national leader in retirement and investor promotion and protection.

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

(1) "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.

(2) "Eligible employer" means a person engaged in a business, an industry, a profession, a trade, or any other entity that is registered with the Washington state department of revenue, and satisfies the requirements to participate in the Washington small business retirement marketplace.

(3) "Enrollee" means any employee who is enrolled in an individual retirement account offered by an eligible employer through the Washington small business retirement marketplace.

(4) "myRA" means the myRA retirement program administered by the United States department of 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 treasury.

(5) "Participating employer" means any eligible employer with employees enrolled in individual retirement accounts offered through the Washington small business retirement marketplace.

(6) "Qualified default investment alternative" means types of investments identified by the federal internal revenue service for employees who do not make an investment choice or are automatically enrolled in a retirement plan.

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

(8) "Qualifying plans" means retirement plan options offered by private sector financial services firms that meet the requirements of this subchapter to participate in the marketplace, and myRA.

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

NEW SECTION. **Sec.**  (1)(a) Subject to the availability of funds under (b) of this subsection, the Washington small business retirement marketplace is created. The director shall contract with a private sector entity to establish a program that connects eligible employers with qualifying plans. The contractor shall not include any person regulated under chapter 21.20 or 48.23 RCW or who has a financial interest in any plan offered in the marketplace. The program must: (i) Establish a protocol for reviewing and approving the qualifications of private sector financial services firms that seek to participate in the marketplace; (ii) design and operate an internet web site that includes information about how eligible employers can participate in the marketplace; (iii) develop marketing materials about the marketplace that can be distributed electronically, posted on agency web sites that interact with eligible employers, or inserted into mail from the department of revenue, department of labor and industries, employment security department, the office of minority and women's business enterprises, department of licensing, and secretary of state's division of corporations; (iv) identify and promote existing federal and state tax credits and benefits for employers and employees that are related to encouraging retirement savings or participating in retirement plans; and (v) promote the benefits of retirement savings and other information that promotes financial literacy. The director may 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.

(b) The department may use only federal or private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the department shall seek federal and private grants and is authorized to accept any funds awarded to the department for use in the marketplace. No new state funds may be expended for the purposes of the Washington small business retirement marketplace.

(2)(a) Only self-employed individuals, sole proprietors, and employers with fewer than one hundred qualified employees at the time of enrollment, are eligible to participate in the marketplace. Prior to connecting any eligible employer with a qualifying plan in the marketplace, the director shall design a plan for the operation of the marketplace. The marketplace must approve at least three types of plans for eligible employer participation: (i) A SIMPLE IRA-type target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement; (ii) a SIMPLE IRA-type balanced fund; and (iii) myRA.

(b) The marketplace may offer a minimum of two product options for the target date or other similar fund and a minimum of two product options for the balanced fund. The options must include: (i) A SIMPLE IRA-type program or other internal revenue service approved employer plan that provides for employer contributions to participating enrollee accounts; and (ii) a payroll deduction individual retirement account type program or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' accounts.

(c) The products must meet federal law or regulation for the plans. 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 shall select the product options offered on the marketplace and may add or remove product options to best meet the needs of enrollees.

(d) The director shall approve a plan for the structure and operation of the marketplace based on recommendations of the entity retained pursuant to subsection (1) of this section.

(e) The plans and accounts 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.

NEW SECTION. **Sec.**  (1) Participation in the Washington small business retirement marketplace is completely voluntary.

(2) Qualifying plans selected by the department to offer products on the marketplace may not charge enrollees more than one hundred basis points in total annual fees, and must provide information about their plan's historical investment performance. Prior to approving a product to be offered on the marketplace, the department must receive verification from the department of financial institutions pursuant to section 9 of this act that each qualifying plan meets the requirements of this section.

(3) Enrollment in any plan offered in the marketplace is not an entitlement and the legislature may modify or terminate the marketplace and the products offered.

NEW SECTION. **Sec.**  The director shall consult with organizations representing private sector employers, private sector employees, private and nonprofit sector retirement plan administrators and providers, and any other individuals or entities that the director determines relevant to the development of an effective and efficient method for operating the marketplace.

NEW SECTION. **Sec.**  The department shall not expose the state of Washington as an employer or through administration of the marketplace to any potential liability under the federal employee retirement income act of 1974. As such, the department is specifically prohibited from offering and operating a state-based retirement plan for businesses or individuals who are not employed in the state of Washington.

NEW SECTION. **Sec.**  Using funds provided by private foundations or other private sector entities, the director may provide incentive payments to participating employers that enroll in the marketplace and referral payments or commissions to any person licensed to sell securities under chapter 21.20 RCW or life insurance or annuities under chapter 48.23 RCW who enrolls a qualifying employer in a plan offered by the marketplace.

NEW SECTION. **Sec.**  The director shall report biennially to the legislature on the effectiveness and efficiency of the Washington small business retirement marketplace, including the levels of enrollment and the retirement savings levels of participating enrollees.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

The department, upon request of the department of commerce, must review individual retirement account products proposed for inclusion in the Washington small business retirement marketplace to confirm that the products comply with the requirements of section 4 of this act.

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, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act are each added to chapter 43.330 RCW and codified with the subchapter heading of "Washington small business retirement marketplace."

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