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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5740

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State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Mullet, Hobbs, Conway, and Van De Wege)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to creating the secure choice retirement savings  
2 program; amending RCW 43.330.732, 43.330.735, and 30B.04.040;  
3 reenacting and amending RCW 43.79A.040; adding new sections to  
4 chapter 43.330 RCW; creating a new section; decodifying RCW  
5 43.330.730; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
8 secure choice retirement savings program act.

9 NEW SECTION. **Sec. 2.** The legislature finds: That large numbers  
10 of households in this state have no or inadequate retirement savings  
11 and many of those households do not have access to any savings plan  
12 at work; that this lack of retirement savings and coverage is more  
13 prevalent among low-income households; and that it is well-  
14 established that most workers will save for retirement if they are  
15 offered a workplace savings program using an opt-out approach.  
16 Washington state is deeply concerned about the retirement prospects  
17 of its citizens and the strain that large numbers of ill-prepared  
18 retirees may impose on taxpayer-financed elderly assistance programs  
19 for housing, food, medical care, and other necessities. Accordingly,  
20 this act will facilitate voluntary retirement savings by workers in

1 this state by establishing an IRA savings program with automatic  
2 enrollment ("auto-IRA") and requiring employers in this state that do  
3 not offer a retirement plan to make the program available to their  
4 employees.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply  
6 throughout sections 2 through 9 of this act unless the context  
7 clearly requires otherwise.

8 (1) "Administrative fund" means the secure choice retirement  
9 savings administrative fund established under section 7 of this act.

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

14 (3) "Contribution rate" means the percentage of a covered  
15 employee's compensation that is withheld from his or her compensation  
16 and paid to the IRA established for the covered employee under the  
17 program.

18 (4) "Covered employee" means any individual who is eighteen years  
19 of age or older, who is employed by a covered employer, and who has  
20 compensation that is allocable to the state. For purposes of the  
21 investment, withdrawal, transfer, rollover, or other distribution of  
22 an IRA, the term covered employee also includes the beneficiary of a  
23 deceased covered employee and an "alternate payee" under state  
24 domestic relations law. For purposes of sections 2 through 9 of this  
25 act, a covered employee, as defined in this subsection, who is  
26 performing services for a client employer that has entered into a  
27 professional employer agreement with a professional employer  
28 organization, as such terms are defined in RCW 50.04.298, must be  
29 treated as employed by the client employer and not by the  
30 professional employer organization.

31 (5) "Covered employer" means an employer that either:

32 (a) Satisfies both of the following requirements:

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

34 (ii) Has not sponsored, maintained, or contributed to a  
35 retirement plan under sections 401(a), 401(k), 403(a), 403(b),  
36 408(k), or 408(p) of the internal revenue code, including such a plan  
37 sponsored or maintained by a professional employer organization with  
38 which the employer has a professional employer agreement, as such  
39 terms are defined in RCW 50.04.298, at any time during the preceding

1 two calendar years and does not currently sponsor, maintain, or  
2 contribute to a retirement plan; or

3 (b) Elects to be a covered employer if and as permitted in  
4 accordance with rules and procedures established by the director.

5 (6) "Director" means the director of the department of commerce.

6 (7) "Employer" means a person or entity engaged in a business,  
7 profession, trade, or other enterprise in the state, whether for  
8 profit or not for profit, that employs more than five individuals in  
9 the state; provided that a federal or state entity, agency, or  
10 instrumentality, or any political subdivision thereof, is not an  
11 employer.

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

14 (9) "Investment advisor" means:

15 (a) An investment advisor registered under the federal investment  
16 advisers act of 1940; or

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

19 (10) "Investment fund" means each investment portfolio  
20 established by the director within the trust for investment purposes.

21 (11) "IRA" means either an individual retirement account or  
22 individual retirement annuity established under section 408 or 408A  
23 of the internal revenue code.

24 (12) "Program" means the secure choice retirement savings program  
25 established under sections 2 through 9 of this act.

26 (13) "Trust" means the IRA retirement trust or annuity contract  
27 established under section 8 of this act.

28 (14) "Trustee" means the trustee of the trust, including an  
29 insurance company issuing an annuity contract, selected by the  
30 director under section 8 of this act.

31 NEW SECTION. **Sec. 4.** (1) The director has the following powers  
32 and duties:

33 (a) To design, establish, and operate the program in accordance  
34 with the requirements set forth in sections 2 through 9 of this act.

35 (b) To collect fees to defray the costs of administering the  
36 program.

37 (c) To enter into contracts necessary or desirable for the  
38 establishment and administration of the program.

1 (d) To hire, retain, and terminate other state or nonstate  
2 entities as the director deems necessary or desirable for all or part  
3 of the services necessary for the management of the program,  
4 including, but not limited to, consultants, investment advisors,  
5 trustees, custodians, insurance companies, recordkeepers,  
6 administrators, actuaries, counsel, auditors, and other  
7 professionals; provided that each service provider must be authorized  
8 to do business in this state.

9 (e) To determine the type or types of IRAs to be offered, the  
10 default contribution rate and automatic escalation rate.

11 (f) To employ a program director and such other individuals as  
12 the director determines to be necessary or desirable to administer  
13 the program and the administrative fund.

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

18 (h) To determine the number of days by which an eligible employer  
19 must make the program available to a covered employee upon first  
20 becoming an eligible employer or covered employee.

21 (i) To adopt rules and procedures for the establishment and  
22 operation of the program and to take such other actions necessary or  
23 desirable to establish and operate the program in accordance with  
24 sections 2 through 9 of this act.

25 (2) The director shall use the following principles in the design  
26 and operation of the program:

27 (a) Operate with low costs but sufficient to ensure that the  
28 program is sustainable;

29 (b) Structure the program so that covered employees are  
30 automatically enrolled and covered employer participation is  
31 required;

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

35 (d) Provide customer service processes to any and all pertinent  
36 persons and disseminate program information to covered employers and  
37 covered employees;

38 (e) Monitor the investment advisor's financial management  
39 policies, processes, and performance.

1 (3) Other state agencies must provide appropriate and reasonable  
2 assistance to the director as needed, including gathering data and  
3 information, in order for the director to carry out the purpose of  
4 sections 2 through 9 of this act.

5 (4) The director shall not impose any obligations on the state,  
6 nor may it pledge the credit of the state.

7 (5) The director, in consultation with the state investment board  
8 and the department of financial institutions, has discretion to  
9 establish and maintain the program by: Contracting with another state  
10 to use that state's auto-IRA program, partnering with one or more  
11 states to create a joint auto-IRA program that includes the program,  
12 or forming a consortium with one or more other states in which  
13 certain aspects of each state's program are combined for  
14 administrative convenience and efficiency, provided that in any such  
15 case, the auto-IRA program used, the joint program, or the consortium  
16 otherwise satisfies the requirements of this chapter.

17 NEW SECTION. **Sec. 5.** (1) The director, the trustee, and each  
18 investment adviser or other person which has control of the assets of  
19 the trust shall be a fiduciary with respect to the trust and IRAs  
20 established and maintained under the program.

21 (2) Each covered employer is required to provide covered  
22 employees with such information as the director directs. No employer  
23 acting as such is a fiduciary with respect to the trust or an IRA or  
24 has fiduciary responsibilities under sections 2 through 9 of this  
25 act.

26 (3) Each fiduciary shall discharge its duties with respect to the  
27 program solely in the interests of covered employees and with the  
28 care, skill, prudence, and diligence under the circumstances then  
29 prevailing that a prudent person acting in a like capacity and  
30 familiar with those matters would use in the conduct of an enterprise  
31 of like character and aims.

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

35 (1) Each covered employer is required to offer to each covered  
36 employee an opportunity to contribute to an IRA established under the  
37 program for the benefit of the covered employee through withholding

1 from his or her compensation. No employer is permitted to contribute  
2 to the program or to endorse or otherwise promote the program.

3 (2) Unless the covered employee chooses otherwise, he or she  
4 shall be automatically enrolled in the program and contributions  
5 shall be withheld from such covered employee's compensation at a rate  
6 set by the director unless the covered employee elects not to  
7 contribute or to contribute at a different rate.

8 (3) The contribution rate of each covered employee shall be  
9 increased at such rate and at such intervals as from time to time  
10 established by the director, unless the covered employee elects not  
11 to have such automatic increases apply.

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

14 (5) The director may establish intervals after which a covered  
15 employee must reaffirm elections, including opt-out elections, with  
16 regard to participation or escalation.

17 (6) Each covered employer shall deposit covered employees'  
18 withheld contributions under the program with the trustee in such  
19 manner as is determined by the director, provided that the employer  
20 shall deliver the amounts withheld to the trustee in good order  
21 within ten business days after the date such amounts otherwise would  
22 have been paid to the covered employee.

23 (7) The director shall determine the rules and procedures for  
24 withdrawals, distributions, transfers, and rollovers of IRAs and for  
25 the designation of IRA beneficiaries.

26 (8) The director shall report annually to the governor and the  
27 legislature outlining the director's activities and the program's  
28 operations.

29 (9) The director shall cause to be furnished to each covered  
30 employer:

31 (a) Information regarding the program;

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

33 Such disclosures must include:

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

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

38 (iii) A description of the tax consequences of an IRA, which may  
39 consist of or include the disclosure statement required to be

1 distributed by the trustee under the internal revenue code and the  
2 treasury regulations thereunder;

3 (iv) A statement that covered employees seeking financial advice  
4 should contact their own financial advisors and that covered  
5 employers are not in a position to provide financial advice and that  
6 covered employers are not liable for decisions covered employees make  
7 under sections 2 through 9 of this act;

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

10 (vi) A statement that neither the program nor the covered  
11 employee's IRA established under the program is guaranteed by the  
12 state;

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

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

27 (i) Making contributions to the covered employee's IRA  
28 established under the program, including a description of the  
29 automatic enrollment rate, the automatic escalation rate and  
30 frequency, and the right to elect to make no contribution or to  
31 change the contribution rate under the program;

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

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

37 (10) Each covered employer shall deliver or facilitate the  
38 delivery of the items set forth in subsection (9)(b) and (c) of this  
39 section to each covered employee at such time and in such manner as  
40 determined by the director.

1 (11) The program must be designed and operated in a manner that  
2 will cause it not to be an employee benefit plan within the meaning  
3 of section 3(3) of the employee retirement income security act of  
4 1974.

5 (12) Nothing in sections 2 through 9 of this act prohibits a  
6 covered employer from contracting with a third party, such as a  
7 payroll service provider or a professional employer organization, to  
8 assist such employer with the tasks required of a covered employer  
9 under sections 2 through 9 of this act.

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

24 (2) The account is authorized to maintain a cash deficit in the  
25 account for a period of no more than six fiscal years after the  
26 implementation of the secure choice retirement savings program to  
27 defray its initial program administration costs. By January 1, 2020,  
28 the director shall establish a program administration spending plan  
29 and a fee schedule to discharge any projected cash deficit to the  
30 account. The legislature may make appropriations into the account for  
31 the purpose of reducing program administration costs.

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

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



1 (2) The assets of IRAs established for covered employees must be  
2 allocated to the trust and combined for investment purposes. Trust  
3 assets must be managed and administered for the exclusive purposes of  
4 providing benefits to covered employees and defraying reasonable  
5 expenses of administering and maintaining, and managing investments,  
6 of the IRAs and the trust, including the expenses of the director  
7 under section 4 of this act.

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

15 (4) The director may allow covered employees to allocate assets  
16 of their IRAs among such investment funds and in such case, the  
17 director also may designate an investment fund as a default  
18 investment for the IRAs of covered employees who do not make an  
19 investment choice.

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

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

33 (7) The trustee is subject to directions of the director under  
34 subsection (5) of this section or an investment adviser under  
35 subsection (6) of this section and otherwise has no responsibility  
36 for the selection, retention, or disposition of trust investments or  
37 assets.

38 (8) The assets of the trust must at all times be preserved,  
39 invested, and expended solely for the purposes of the trust and no  
40 property rights therein shall exist in favor of the state or any

1 covered employer. Trust assets may not be transferred or used by the  
2 state for any purposes other than the purposes of the trust or  
3 funding the expenses of operating the program, including the expenses  
4 of the director. Amounts deposited with the trustee are not property  
5 of the state and may not be commingled with state funds and the state  
6 has no claim to or against, or interest in, the trust assets.

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

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

22 (11) The trust is authorized to engage in trust business under  
23 Title 30B RCW and is exempt from the requirement to obtain a  
24 certificate of authority from the department of financial  
25 institutions under Title 30B RCW.

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

34 NEW SECTION. **Sec. 9.** The director may establish a pilot program  
35 for covered employers to auto enroll employees into an IRA by January  
36 1, 2020. The director may also provide for a staggered rollout of the  
37 program so that covered employers are initially required to offer the  
38 program to covered employees in stages based on employee headcount or  
39 such other criteria as may be established by the director.

1        NEW SECTION.    **Sec. 10.**    RCW 43.330.730 (Finding—2015 c 296) is  
2    decodified.

3        **Sec. 11.**    RCW 43.330.732 and 2015 c 296 s 2 are each amended to  
4    read as follows:

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

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

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

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

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

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

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

30       ~~((7))~~ (6) "Private sector financial services firms" or  
31    "financial services firms" mean persons or entities licensed or  
32    holding a certificate of authority and in good standing by either the  
33    department of financial institutions or the office of the insurance  
34    commissioner and meeting all federal laws and regulations to offer  
35    retirement plans.

36       ~~((8))~~ (7) "Qualified employee" means those workers who are  
37    defined by the federal internal revenue service to be eligible to  
38    participate in a specific qualified plan.

1       (~~(9)~~) (8) "Target date or other similar fund" means a hybrid  
2 mutual fund that automatically resets the asset mix of stocks, bonds,  
3 and cash equivalents in its portfolio according to a selected time  
4 frame that is appropriate for a particular investor. A target date is  
5 structured to address a projected retirement date.

6       (~~(10)~~) (9) "Washington small business retirement marketplace"  
7 or "marketplace" means the retirement savings program created to  
8 connect eligible employers and their employees with approved plans to  
9 increase retirement savings.

10       **Sec. 12.** RCW 43.330.735 and 2017 c 69 s 1 are each amended to  
11 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Sec. 13.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and  
7 2018 c 127 s 6 are each reenacted and amended to read as follows:

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

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

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

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

27 (b) The following accounts and funds must receive their  
28 proportionate share of earnings based upon each account's or fund's  
29 average daily balance for the period: The 24/7 sobriety account, the  
30 Washington promise scholarship account, the Gina Grant Bull memorial  
31 legislative page scholarship account, the Washington advanced college  
32 tuition payment program account, the Washington college savings  
33 program account, the accessible communities account, the Washington  
34 achieving a better life experience program account, the community and  
35 technical college innovation account, the agricultural local fund,  
36 the American Indian scholarship endowment fund, the foster care  
37 scholarship endowment fund, the foster care endowed scholarship trust  
38 fund, the contract harvesting revolving account, the Washington state  
39 combined fund drive account, the commemorative works account, the

1 county enhanced 911 excise tax account, the toll collection account,  
2 the developmental disabilities endowment trust fund, the energy  
3 account, the fair fund, the family and medical leave insurance  
4 account, the fish and wildlife federal lands revolving account, the  
5 natural resources federal lands revolving account, the food animal  
6 veterinarian conditional scholarship account, the forest health  
7 revolving account, the fruit and vegetable inspection account, the  
8 future teachers conditional scholarship account, the game farm  
9 alternative account, the GET ready for math and science scholarship  
10 account, the Washington global health technologies and product  
11 development account, the grain inspection revolving fund, the  
12 Washington history day account, the industrial insurance rainy day  
13 fund, the juvenile accountability incentive account, the law  
14 enforcement officers' and firefighters' plan 2 expense fund, the  
15 local tourism promotion account, the low-income home rehabilitation  
16 revolving loan program account, the multiagency permitting team  
17 account, the northeast Washington wolf-livestock management account,  
18 the pilotage account, the produce railcar pool account, the regional  
19 transportation investment district account, the rural rehabilitation  
20 account, the Washington sexual assault kit account, the stadium and  
21 exhibition center account, the youth athletic facility account, the  
22 self-insurance revolving fund, the children's trust fund, the  
23 Washington horse racing commission Washington bred owners' bonus fund  
24 and breeder awards account, the Washington horse racing commission  
25 class C purse fund account, the individual development account  
26 program account, the Washington horse racing commission operating  
27 account, the life sciences discovery fund, the Washington state  
28 heritage center account, the reduced cigarette ignition propensity  
29 account, the center for childhood deafness and hearing loss account,  
30 the school for the blind account, the Millersylvania park trust fund,  
31 the public employees' and retirees' insurance reserve fund, the  
32 school employees' benefits board insurance reserve fund, (~~{the}~~)  
33 the public employees' and retirees' insurance account, (~~{the}~~) the  
34 school employees' insurance account, the secure choice retirement  
35 savings administrative fund, and the radiation perpetual maintenance  
36 fund.

37 (c) The following accounts and funds must receive eighty percent  
38 of their proportionate share of earnings based upon each account's or  
39 fund's average daily balance for the period: The advanced right-of-  
40 way revolving fund, the advanced environmental mitigation revolving

1 account, the federal narcotics asset forfeitures account, the high  
2 occupancy vehicle account, the local rail service assistance account,  
3 and the miscellaneous transportation programs account.

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

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

14 **Sec. 14.** RCW 30B.04.040 and 2014 c 37 s 306 are each amended to  
15 read as follows:

16 Notwithstanding any other provision of this title, a person is  
17 exempt from the requirement of a certificate of authority or approval  
18 under this title, or from regulation by the director pursuant to this  
19 title, if the person is:

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

22 (2) Engaging in business in this state (a) as a national banking  
23 association or (b) as a federal mutual savings bank, federal stock  
24 savings bank, or federal savings and loan association under authority  
25 of the office of the comptroller of the currency;

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

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

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

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



1 (7) Acting as trustee under a deed of trust delivered only as  
2 security for the payment of money or for the performance of another  
3 act;

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

7 (9) Engaging in a securities transaction or providing an  
8 investment advisory service in the capacity of a licensed and  
9 registered broker-dealer, investment advisor, or registered  
10 representative thereof, provided the activity is regulated by the  
11 department or the United States securities and exchange commission;

12 (10) Engaging in the sale and administration of an insurance  
13 product by an insurance company or agent licensed by the office of  
14 the insurance commissioner to the extent that the activity is  
15 regulated by the office of the insurance commissioner;

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

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

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

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

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

31 NEW SECTION. **Sec. 15.** Sections 2 through 9 of this act are each  
32 added to chapter 43.330 RCW.

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