**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

# Consumer Protection & Business Committee

# HB 2516

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

**Sponsors**: Representatives Duerr, Kirby, Ryu, Kilduff, Springer, Tarleton, Valdez, Tharinger and Ormsby.

**Brief Summary of Bill**

- Creates the Secure Choice Retirement Savings Program (Program) at the Employment Security Department.
- Requires certain employers to automatically enroll their employees into an individual retirement account in the Program.

**Hearing Date**: 1/28/20

**Staff**: Serena Dolly (786-7150).

**Background**:

Washington Small Business Retirement Marketplace.
The Washington Small Business Retirement Marketplace (Marketplace) is operated by the Department of Commerce (Department) and allows self-employed individuals and employers with fewer than 100 employees to participate in retirement plans. The Department approves private financial service firms to offer approved plans on the Marketplace. The Marketplace must provide a range of investment options to meet the needs of investors with various levels of risk tolerance. Options include a simple individual retirement account (IRA) plan for employer contributions to participating enrollee accounts, payroll deduction IRA-type plans, and workplace-based IRAs open to all workers in which the employer does not contribute to employees' accounts. Employers are not required to participate in the Marketplace.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Marketplace must offer the myRA plan, which is a federal government sponsored plan similar to a Roth IRA. The myRA plan was designed to help low- and middle-income workers who do not have access to a 401(k) or pension at work to start saving for retirement by investing in a risk adverse, interest-bearing account backed by the United States Treasury. The myRA plan was closed in 2018.

**Summary of Bill**:

Secure Choice Retirement Savings Program.
The Secure Choice Retirement Savings Program (Program) is established within the Employment Security Department. The Commissioner of the Department (Commissioner) is responsible for designing, establishing, and operating the Program. The Commissioner is authorized to enter into necessary contracts and to collect fees to defray administration costs.

The Commissioner has the authority to determine the types of IRA plans to be offered, a default contribution rate, and an escalation rate. The IRAs offered through the Program may be traditional or RothIRA. The default contribution rate must be no less than three percent and no more than ten percent. The automatic escalation may not increase the employee contribution rate above ten percent. The Commissioner may establish intervals after which a covered employee must reaffirm elections, including opt-out elections with regard to participation or escalation.

The Commissioner must structure the Program so that employees are automatically enrolled and covered employer participation is required. The Program must be designed and operated in a manner that will not cause it to be an employee benefit plan as defined by the Employee Retirement Income Security Act of 1974.

The Commissioner must prescribe which records employers are required to maintain. Information obtained by the Commissioner concerning an employer or employee is generally confidential and not subject to public disclosure. Information may be shared only to facilitate operation of the Program.

The Commissioner, in consultation with the Washington State Investment Board and the Department of Financial Institutions, may establish the Program by contracting with another state or partnering with one or more other states. If the Commissioner establishes the Program by contracting with another state, the rate of the administrative fee may not exceed the lesser of the rate charged to employees of another state participating in the same program or 1.05 percent.

The Commissioner must establish an outreach plan and provide each employer with: (1) information about the Program, retirement, and general financial education; (2) required disclosures to be provided to employees; and (3) information, forms, and instructions to be provided to employees. The Commissioner must also develop a marketing strategy that includes outreach to communities of color and encourages small business engagement.

Covered Employers.
A "covered employer" is an employer that either: (1) elects to be covered; or (2) does not currently sponsor, maintain, or contribute to an employee retirement plan; and has not sponsored, maintained, or contributed to an employee retirement plan at any time during the preceding two calendar years.

Covered employers are required to offer their employees an opportunity to contribute, through payroll deduction, to an IRA established under the Program. Employers may not withhold employee contributions in lump sums.

Employers may not endorse, promote, or contribute to the Program.

A covered employer who fails to facilitate enrollment of a covered employee is subject a $250 annual penalty per employee. The penalty is adjusted annually for inflation. No penalty may be assessed until July 1, 2025.

Covered Employees.
A "covered employee" is an individual who:
- is at least 18 years old;
- is employed by a covered employer; and
- has compensation allocable to the state.

Unless an employee chooses otherwise, the employee is enrolled in the Program, and contributions must be withheld from the covered employee's compensation at a rate determined by the Commissioner. The employee may opt out of the program. The employee may also increase or decrease their contribution rate. The employee's contribution rate must be increased periodically as established by the Commissioner, unless the employee elects not to have such automatic increases apply.

Implementation.
The Commissioner must develop an implementation plan that details how the Program will be designed, established, operated, and marketed. By December 1, 2020, the Commissioner must submit a report describing the implementation plan to the appropriate committees of the Legislature.

The Commissioner may establish a pilot project to begin by January 1, 2021. The Commissioner may also provide for a staggered rollout of the Program based on employee headcount or other criteria. The Program must be available to all covered employers no earlier than January 1, 2022, and no later than January 1, 2023.

Administrative Fund.
The Secure Choice Retirement Savings Administrative Fund is created in the custody of the State Treasurer as a non-appropriated account. The account is used to administer the Program, and only the Commissioner may authorize expenditures. The account is authorized to maintain a cash deficit for a time period no longer than eight years after the implementation of the Program. The Commissioner must have a spending plan and a fee schedule to discharge any cash deficit by January 1, 2021.

Administrative fees deducted from employee accounts may be used to contract or partner with one or more other states. No other state funds may be used to contract or partner with other states.

The Commissioner must submit an annual report to the Legislature with an update on: (1) administrative fees, including progress on eliminating the cash deficit in the administrative fund; (2) the administrative fee cost basis assigned to each state participating in the program; (3) the use of administrative fees; and (4) a plan to reduce the administrative fee cost basis.

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

Washington Small Business Retirement Marketplace.
An employer with at least one employee may participate in the Marketplace. The Marketplace is no longer required to offer myRA, and the definition of myRA is removed from the Marketplace statutes.

**Appropriation**: None.

**Fiscal Note**: Requested on January 21, 2020.

**Effective Date**: The bill takes effect 90 days after adjournment of the session in which the bill is passed.