

# HOUSE BILL REPORT

## E2SSB 5740

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**As Reported by House Committee On:**  
Consumer Protection & Business  
Appropriations

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

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

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Mullet, Hobbs, Conway and Van De Wege).

**Brief History:**

**Committee Activity:**

Consumer Protection & Business: 3/19/19, 4/2/19 [DPA];  
Appropriations: 4/8/19 [DPA(APP w/o CPB)].

**Brief Summary of Engrossed Second Substitute Bill  
(As Amended by Committee)**

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

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### HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Kirby, Chair; Reeves, Vice Chair; Blake, Ryu, Santos, Stanford and Walen.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Vick, Ranking Minority Member; Hoff, Assistant Ranking Minority Member; Barkis, Dufault, Volz and Ybarra.

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

**Background:**

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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.*

### Washington Small Business Retirement Marketplace.

The Washington Small Business Retirement Marketplace (Marketplace) allows self-employed individuals and employers with fewer than 100 employees to participate in retirement plans. Private financial service firms may be approved by the Department of Commerce (Department) 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.

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.

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### **Summary of Amended Bill:**

#### Secure Choice Retirement Savings Program.

The Secure Choice Retirement Savings Program (Program) is established within the Department. The Director of the Department (Director) is responsible for designing, establishing, and operating the Program. The Director is authorized to enter into necessary contracts and to collect fees to defray administration costs. The Director has the authority to determine the types of IRA plans to be offered, a default contribution rate, and an escalation rate. The Director may establish intervals after which a covered employee must reaffirm elections, including opt-out elections with regard to participation or escalation.

The Director must design and operate the Program in a manner that will not cause it to be an employee benefit plan as defined by the Employee Retirement Income Security Act of 1974. The IRAs offered through the Program must be designed to qualify for favorable federal tax treatment as a Roth IRA under section 408A of the Internal Revenue Code.

The Director, 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.

The Director must establish an outreach plan and provide each employer with: (1) information about the Program; (2) required disclosures to be provided to employees; and (3) information, forms, and instructions to be provided to employees. The Director 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 elects to be covered or that:

- has more than five employees;

- has been in business for at least five years;
- 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 must deliver to their employees information provided by the Department, including materials about the Program, disclosures, and necessary forms, at such time and in such a manner as determined by the Director. Employers may not endorse, promote, or contribute to the Program.

#### 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 Director. 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 Director, unless the employee elects not to have such automatic increases apply.

#### Administrative Fund.

The Secure Choice Retirement Savings Administrative Fund is created in the custody of the State Treasurer as a non-appropriated account. The fund is used to administer the Program, and only the Director may authorize expenditures from the account. The account is authorized to maintain a cash deficit for a time period no longer than six years after the implementation of the Program. The Director must have a spending plan and a fee schedule to discharge any cash deficit by January 1, 2020.

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 Department 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 Director 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 Director must establish one or more investment funds. The Director, 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 Director may allow employees to allocate assets of their IRAs among investment funds and may also designate an investment fund as the default fund. The assets of the Trust must at all times be preserved, invested, and expended solely for the purposes of the Trust. No property rights shall exist in favor of the state or any covered employer. Trust assets may not be transferred or used by the state for any purpose other than the expenses related to operating the Program. The assets of the Trust must at all times be held separate and apart from the assets of the state. Any security issued, managed, or invested by the Director within the Trust on behalf of an individual participating in the Program is exempt from statutes related to the sale or offering of unregistered securities.

#### Implementation.

The Department must develop an implementation plan that details how the Program will be designed, established, operated, and marketed. By December 1, 2019, the Department must submit a report describing the implementation plan to the appropriate committees of the Legislature.

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

#### 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.

#### **Amended Bill Compared to Engrossed Second Substitute Bill:**

The amended bill requires the Department to:

- develop and implement a marketing strategy for the Program that includes outreach to communities of color and encourages small business engagement;
- develop an implementation plan that details how the Program will be designed, established, operated, and marketed and submit a report describing the implementation plan to the appropriate committees of the Legislature by December 1, 2019; and
- submit an annual report to the Legislature with an update on: (1) the 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.

If the Director chooses to contract with another state or states to use an existing program: (1) administrative fees in the Program's administrative fund may be used for the costs of the contract; (2) no other state funds may be used to contract or partner; (3) the rate of the administrative fee for Washington employees may not exceed the rate paid by employees of another state participating in the same Program; and (4) an increase in the rate of the

administrative fee is allowed only after consultation with the Washington State Investment Board and the chairs and ranking members of the appropriate legislative committees.

The amended bill requires the Program to offer only accounts intended to qualify for favorable tax treatment as a Roth IRA under section 408A of the Internal Revenue Code and removes authority for traditional IRAs to be offered.

The amended bill also adds a severability clause for any provision found to be in conflict with federal law or regulations, including the Employee Retirement Income Security Act of 1974.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This is a follow up to the Marketplace created four years ago as a way to help small businesses offer retirement accounts for its employees. The Marketplace is a voluntary program, and it has not had the number of enrollees expected. None of the large retirement plan providers offer a plan on the Marketplace because it is not profitable at the small amounts invested.

The Program created in this bill will not create costs for employers and exempts employers during their first five years of business. Some small businesses would like to offer retirement plans but do not have the resources. The payroll deduction required under this Program is a reasonable task compared to the alternative ways a small business could offer retirement plans.

The country has a retirement savings problem. Leaving it to the private market and individual employers has not worked. The best way to get people to save for retirement is to save through their job. Ultimately it will save the state money because retirees will have more money and be less likely to seek public assistance. Women and people of color are disproportionately impacted by the lack of savings options. The Program is designed to offer Roth IRAs so as to avoid penalties for early withdrawals.

Oregon Saves was started in 2017 as a state-sponsored auto-IRA program and now has more than 30,000 participants. Retirement plans are offered through payroll deduction with a 5 percent default rate and 1 percent increase per year. Oregon is interested in partnering with Washington.

(Opposed) The state should improve its current voluntary Marketplace instead of implementing a new program. The State of Oregon does not need to tell Washington

residents how to save for retirement. One study found the Program in this bill would be sustainable after 20 years if all covered employers participate.

This bill puts the state in direct competition with the financial industry. The industry currently offers plans to smaller businesses. Retirement plans should be safe, stable, sustainable, and tailored, and the Program does not meet that criteria. The Oregon Legislature is currently considering two bills that would change its plan, and it cannot currently accept participants from other states. Changing rules and fees creates uncertainty. The Program does not allow the personal service provided to people in the private market nor does it account for services provided in different languages.

The Program in this bill is preempted by federal law because there is no way to design a program that would not be subject to the Employee Retirement Income Security Act of 1974. The bill does not address who is liable if laws are violated.

**Persons Testifying:** (In support) Senator Mullet, prime sponsor; Cathy MacCaul, American Association of Retired Persons; Michael Parker, Oregon State Treasury; Erik Strom, Russell Investments; and Julia Gorton, Washington Hospitality Association.

(Opposed) John Mangan, American Council of Life Insurers; Mel Sorensen, Allstate; Jean Leonard, State Farm Insurance; Wayne Lunday, National Association of Insurance and Financial Advisors; and Mark Rose, Washington Association of Health Underwriters.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Consumer Protection & Business. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

**Minority Report:** Do not pass. Signed by 12 members: Representatives MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Stokesbary, Ranking Minority Member.

**Staff:** David Pringle (786-7310).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Consumer Protection & Business:**

The Appropriations Committee moved the federal severability clause, which makes the bill inoperative to the extent that it is found to be in conflict with federal law or regulations, from

a separate section at the end of the bill to section 6 of the bill, where the bill states that the program must be designed and operated to not conflict with federal law.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested April 5, 2019.

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

**Staff Summary of Public Testimony:**

(In support) Although organizations supporting older people support this bill, it is important to get people in their twenties to start saving for their retirement. The private sector has failed to deliver—the products on the market are too expensive. Employee participation is entirely voluntary, but participation rates in opt-out plans are much higher. The contributions that will be made by many participating employees will be small. Several states are implementing similar programs right now using the model that is followed in this bill. There is no General Fund impact.

(Opposed) The financial services industry already has many products designed to address the needs served by this bill—providing lower income workers opportunities to save for retirement at low cost. The problem that this bill is trying to address is really more of a public education challenge. There are securities professionals in almost every community across the state that sell appropriate investment products to the employees targeted by this bill. The Secure Choice Retirement Savings Program will create significant legal exposure for the state because it appears to violate the Employee Retirement Income Security Act.

**Persons Testifying:** (In support) Cathy MacCaul, AARP.

(Opposed) Mel Sorensen, American Council of Life Insurers and National Association of Insurance and Financial Advisors.

**Persons Signed In To Testify But Not Testifying:** None.