SENATE BILL REPORT
ESSB 6069

As Amended by House, March 6, 2024

Title: An act relating to improving retirement security for Washingtonians by establishing Washington saves, an automatic enrollment individual retirement savings account program, and updating the Washington retirement marketplace statute.

Brief Description: 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.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Mullet, Valdez, Hunt, Liias, Nguyen, Saldaña and Van De Wege; by request of State Treasurer).

Brief History:

Committee Activity: Ways & Means: 1/23/24, 2/02/24 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 2/12/24, 43-6.
Passed House: 3/1/24, 66-30; 3/1/24, 57-39; 3/6/24, 55-41.

Brief Summary of Engrossed First Substitute Bill

- Requires certain employers that do not offer their employees a qualified retirement plan to allow employees to contribute to an individual retirement account through an automatic payroll deduction.
- Expands the Washington Small Business Retirement Marketplace to include employers with at least one eligible employee.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6069 be substituted therefor, and the substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Rivers, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway,

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

Dhingra, Hunt, Keiser, Muzzall, Pedersen, Randall, Saldaña, Torres, Van De Wege and Wellman.

Minority Report: Do not pass.
Signed by Senators Schoesler, Ranking Member, Capital; Hasegawa.

Minority Report: That it be referred without recommendation.
Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Wagoner.

Staff: Amanda Cecil (786-7460)

SENATE COMMITTEE ON WAYS & MEANS

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Background: Private sector employers are not required by state or federal law to provide employer sponsored retirement plans. Instead, some small business employers may not offer the retirement plans due to concerns about costs, administrative burdens, and potential liability. Congress has enacted the 2019 SECURE Act and the 2022 SECURE 2.0 Act to make offering retirement plans more attractive to employers. Private sector employers offering retirement plans to their employees must comply with the Employee Retirement Income Security Act (ERISA). To qualify for tax benefits available for both employers and employees, employers must maintain adequate record keeping, fairness, and funding in their retirement plans as specified by ERISA.

Private sector employees participate in Social Security, and also have access to federally regulated retirement investment options such as the Individual Retirement Account (IRA). Banks, investment firms, and financial planners advise and assist individuals in planning and investing for retirement.

The Washington Small Business Retirement Marketplace (Marketplace) was created in 2015, providing Washington self-employed individuals and employers with fewer than 100 employees the opportunity to participate in retirement plans. Participation in the plan is voluntary for employers, and the program may be supported by private, federal, or state funds. The Department of Commerce (Commerce) must contract with private sector entities to establish the Marketplace and establish protocols for participation. In order for the Marketplace to operate, there must be at least two approved plans. All private firms and plans that meet the requirements of the Marketplace may participate. Qualified plans on the Marketplace may not charge enrollees more than 100 basis points in total annual fees. The Department of Financial Institutions and the Office of the Insurance Commissioner are required to review retirement account products for eligibility for inclusion in the Marketplace.

Summary of Engrossed First Substitute Bill: Employer eligibility to enroll in a plan through the Marketplace administered by Commerce is expanded to include employers with at least one eligible employee and no maximum.

The Washington Saves Program is created, requiring covered employers to allow employees an opportunity to contribute to an IRA through an automatic payroll deduction. Covered employers are businesses located in Washington State for at least two years, that had employees working a combined minimum of 10,400 hours during the previous calendar year, and that do not already offer employees a qualified retirement plan. Employers are required to enroll employees who have had continuous employment of one year or more in the program at default contribution rates. Employees may opt out of the program.

A nine member governing board is created to design, develop, implement, maintain, and oversee the program. Membership of the board includes:

- the State Treasurer, who shall act as chair of the board;
- the Director of Labor and Industries (L&I) or the director's designee; and
- the following members, appointed by the Governor:
    1. three members with demonstrated financial, legal, or other relevant program experience;
    2. one member representing the financial industry;
    3. one member representing a retirement advocacy organization;
    4. one member representing covered employers; and
    5. one member representing covered employees.

The board is responsible for contracting with outside firms to provide investment management and manage the performance of investment managers. Additionally the board will set the initial default contribution rates between 3 and 7 percent, a default escalation rate of not more than 1 percent, and a maximum default rate of 10 percent. The board must also adopt an investment policy statement and ensure that the investment options offered are consistent with the objectives of the program. The governing board will collect administrative fees to defray the cost of administering the program. The board will report to the Legislature annually on participation, account performance, board decisions, and any recommendations to the regarding the program. The board may enter the program into a consortium alliance, joint venture, partnership, compact or contract with another state or group of states.

Subject to appropriations, the Office of the Treasurer must provide staff and administrative support to the board. The Washington Saves Administrative Treasury Trust Account is created in the custody of the State Treasurer and is exempt from appropriation and allotment provisions. The State Treasurer or a designee may authorize expenditures from the account for administrative and operating expenses of the program.

L&I must educate employers of their responsibilities and in the case of noncompliance, investigate complaints, educate employers about how to come into compliance, and, issue citations and collect penalties. Complainants can be a covered employee or someone acting on an employee's behalf. The maximum penalty for a first-time willful violation is $100 and $250 for a second willful violation. For subsequent willful violations, the employer is subject to a maximum penalty of $500 for each violation. L&I must facilitate a process in which employers may appeal complaints.

The board is directed to launch the program by January 1, 2027, and may stagger implementation of the program in stages after this date.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill simplifies retirement for employees and employers and employees can opt out at any time. Nearly two out of three millennials have no retirement savings. Individual lack of savings has a significant impact on tax payers. If individuals saved just $95 per month they would erase the added tax burden. The complexity and cost of administering a retirement savings plan is significant. Workers of color have a disproportionate lack of access to retirement savings through work. This program will address historical racial inequities in retirement savings. Many small business support this bill. Other states have created similar programs with over $1 billion in assets under management. The Oregon plan has provided an easy, accessible way for employees to save. People are 15 times more likely to save when a savings option is provided through their work place. Accounts will be portable and remain with the worker.

CON: The auto IRA is the not the best way to address the lack of savings. The problem is a lack of liquidity rather than a lack options. A better option is encouraging multiemployer plans.

OTHER: Withdrawal and opt out rates are high under the existing programs. A better option is a pooled employer program such as the program moving forward in Nevada. An automatic IRA disincentives pooled employer plan programs and does not provide employers with federal tax benefits.

Persons Testifying: PRO: Senator Mark Mullet, Prime Sponsor; John Scott, The Pew Charitable Trusts; Jill Nelson; Mike Pelliciotti, State Treasurer; Travis Rosenthal, Pike Street Hospitality Group; Paula Sardinas, WBBA (WA Build Back Alliance); Nathan Glassey, American Retirement Association; Petros Koumantaros, Spectrum Pension Consultants; Cathy MacCaul, AARP Washington State.

CON: Chris Bandoli, National Association of Insurance and Financial Advisors Washington.

OTHER: John Mangan, American Council of Life Insurers; John Suk, Portalus.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Increases the membership of the governing board from 9 to 15 members by adding four legislative members; a member of the securities industry; a member of the insurance industry; a member who is a certified financial planner; a member representing the interests of small, independent businesses; a member representing the interests of minority-owned and women-owned businesses; and a member of the Washington Asset Building Coalition, while removing three members with demonstrated financial, legal, or relevant program experience and a member of the financial industry.
- Modifies the chairmanship of the governing board by requiring the governing board to choose co-chairs from the legislative membership for the design stage of the program until July 1, 2027, and then requires the governing board to provide recommendations about who should be chair of the governing board once the program is operational after July 1, 2027.
- Changes the role of legislative members to an ex officio, advisory role after July 1, 2027, once the program is operational.
- Changes the entity responsible for staffing and providing administrative support to the Washington Saves Program (program) from the Office of the State Treasurer to the Department of Financial Institutions.
- Requires the program to 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.
- Requires the governing board to conduct an outreach and education initiative in which the governing board consults, educates, and receives feedback on the program design and implementation from covered employers and covered employees.
- Requires the outreach and education initiative to ensure that diverse employer and employee communities are consulted, that interpreters are provided, and that written documents and materials are translated, and requires the governing board to work with the various state commissions to develop culturally and linguistically responsive outreach and education plans.
- Delays the implementation date for the program from January 1, 2027, to July 1, 2027.
- Requires the governing board to submit a preliminary report to the Legislature that is due December 1, 2025, on the proposed timeline set forth under the bill and progress on outreach initiatives and program implementation.
- Requires the governing board to submit a final report on program design and implementation recommendations due December 1, 2026, that includes a comprehensive summary of outreach activities conducted by the governing board to receive feedback on

program elements and implementation.

- Delays the standard, annual reporting requirement for program updates and information to begin December 1, 2028.
- Clarifies that the governing board is the entity responsible for developing program information and disclosures, and that covered employers are only responsible for distributing program information and disclosures to employees.
- Specifies that the governing board must design the program so that in addition to other elements, an employer that is not considered a covered employer has no reporting or registration obligation or requirement to take any action under the program other than to claim an exemption from coverage.
- Permits covered employers to automatically enroll covered employees, unless the employees out, in a qualified retirement plan offered by a trade association or chamber of commerce in lieu of the individual retirement account established by the program.
- Requires the governing board to evaluate options to assist covered employees and covered employers to identify private sector financial advisors, to the extent feasible and permitted by law, including a website established and maintained by the governing board.
- Clarifies that information, forms, and instructions furnished to employees include instructions on how to access funds.
- Specifies that the governing board must begin meeting four times annually beginning in 2025.
- Specifies that the program be designed and operated to 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.
- Requires the governing board to include 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 when developing a strategy to educate and inform covered employers about their administrative duties under the program.
- Specifies that outreach, marketing, and educational initiatives regarding the program must promote cultural humility and engage culturally relevant and responsive approaches while including consideration for socially vulnerable communities historically excluded from, marginalized by, or face barriers to participation in workplace retirement savings programs.
- Requires the governing board to 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.
- Makes it explicit that a covered employee may choose to opt out of the program at any time.
- Requires the governing board to design the program with a simple process for covered employees to opt out of the program at any time or modify their payroll deductions.
- Requires the governing board to develop disclosures for the program that include a statement that the program is voluntary for covered employees, and a covered employee

may opt out of the program at any time.

- Requires the governing board to develop information, forms, and instructions that are to be furnished to covered employees that includes procedures for how to opt out of the program at any time.