HOUSE BILL REPORT
HB 2516

As Reported by House Committee On:
Consumer Protection & Business

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

Brief Description: Creating the secure choice retirement savings program.

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

Brief History:
Committee Activity:
Consumer Protection & Business: 1/28/20, 2/7/20 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kirby, Chair; Blake, Duerr, Johnson, J., Ryu, Santos 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:

Washington Small Business Retirement Marketplace.

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 Washington Small Business Retirement Marketplace (Marketplace) is operated by the Department of Commerce and allows self-employed individuals and employers with fewer than 100 employees to participate in retirement plans. The Department of Commerce 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.

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-income 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 Substitute Bill:

Secure Choice Retirement Savings Program.
The Secure Choice Retirement Savings Program (Program) is established within the Employment Security Department (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 Roth IRA. The default contribution rate must be no less than 3 percent and no more than 10 percent. The automatic escalation may not increase the employee contribution rate above 10 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 rate charged to employees of another state participating in the same program. If the Commissioner does not establish the Program by contracting with another state or partnering with one or more other states, the rate may not exceed 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.

<u>Covered Employers</u>.
A "covered employer" is an employer that:
- has been in business for at least five years;
- has more than five employees;
- 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 to a $250 annual penalty per employee. The penalty is adjusted annually for inflation. No penalty may be assessed until July 1, 2025.

<u>Covered Employees</u>.
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 his or her 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. The Commissioner may set requirements for when covered employees may change their election to participate in the program, change their contribution rate, or change their election to have automatic increases in their contribution rate apply, provided that such changes may not be permitted more frequently than quarterly.

Implementation.
The Commissioner must develop an implementation plan that details how the Program will be designed, established, operated, and marketed. By February 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 nonappropriated 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 March 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 will 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.

Substitute Bill Compared to Original Bill:

The original bill required all employers that had not sponsored, maintained, or contributed to an employee retirement plan at any time during the preceding two calendar years to participate in the Program and allowed any other employer to voluntarily participate. The substitute bill requires participation in the Program by any employer with more than five employees that has been in business for at least five years if the employer has not sponsored, maintained, or contributed to an employee retirement plan at any time during the preceding two calendar years. The substitute bill does not allow any other employers to voluntarily participate.

The original bill allowed the Commissioner to prescribe the records employers must maintain and to inspect the records when necessary. The substitute bill retains these record provisions and specifies that the Commissioner will review and make copies of employer records in coordination, to the extent practicable, with reviews under the Employment Security Act, the Family and Medical Leave Act, and the Long-Term Services and Supports Trust Program.

The original bill allowed employees to change contribution elections at any time. The substitute bill allows the Commissioner to set requirements for when covered employees may change their elections, which may not be more frequently than quarterly.

The original bill provided the Commissioner with the discretion to establish an advisory board for the Program. The substitute bill requires the Commissioner to establish an advisory committee and specifies the membership.

The substitute bill eliminates a requirement in the original bill that employers deliver employee contributions to the trustee within 10 business days of the employee's pay date. The substitute bill also changes the dates by which the Commissioner must establish an administration plan and administrative fee schedule and submit a report to the Legislature describing the implementation plan.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) Many people have difficulty saving for retirement. As a country with 50 million people without any retirement savings, all options to address this crisis should be explored.

Two-thirds of registered Washington voters are anxious about not having enough saved for retirement, and 35 percent have saved less than $40,000. Many employers do not offer retirement plans for their employees, but people are 15 times more likely to save with employer-sponsored plans. This program will help small employers help their employees save. Other states have implemented similar programs successfully. In Oregon, 37 percent of eligible employees have enrolled. Programs in Illinois and California are operating successfully. Other state programs are in the process of being implemented. Legal opinions have found no risks to the state related to the Employee Retirement Income Security Act (ERISA). The United States Department of Licensing has issued a statement that this type of program does not violate the ERISA. There are no pending arbitration or legal challenges to a similar California program.

(Opposed) Many changes have been made to the retirement market since this proposal first surfaced in 2007. There is a private market that offers a variety of retirement savings options to individuals and small employers. This proposal will cost the state a lot of money and expose it to ERISA challenges. This model has been introduced at least 200 times in 44 states. Thirty-seven states have rejected this type of program due to the cost and legal exposure. Other states have had to significantly subsidize their programs. Connecticut has spent all of its implementation funds, and the program has still not been implemented. The most successful program is in Oregon, and that state has spent $5.2 million of its general fund on implementation. There is no longer a legal safe harbor for these programs. California's program is already being challenged. One survey found 95 percent of small businesses were opposed this proposal. Smaller businesses and newer businesses should not have to participate. There are no limits on how frequently an employee can change contribution rates. This will impose administrative costs on employers. More resources should be devoted to the existing Marketplace instead of this program. A new federal law offers tax credits to small employers that provide retirement accounts. This program instead penalizes employers for not participating. This program does not provide employees with the protections offered by the ERISA.

(Other) Retirement security is important, and the state has a role. Higher-income workers have access to retirement plans and can afford to contribute. Lower-income and middle-income workers do not have either the opportunity or the extra income. There still may be income inequalities with this program, and lower-income workers who cannot afford to save may receive limited benefits. The state needs to look at broader ways to ensure a financially secure retirement for low-income and middle-income workers.

Persons Testifying: (In support) Representative Duerr, prime sponsor; Eric Strom, Russel Investments; Dennis Eagle, Washington Federation of State Employees; and Cathy MacCaul, American Association of Retired Persons.

(Opposed) Bill Stauffacher, Securities Industry and Financial Markets Association; Mel Sorensen, American Council of Life Insurers and National Association of Insurance and Financial Advisers; John Mangan, American Council of Life Insurers; Damon George, Retirement Strategies and National Association of Insurance and Financial Advisers; and Patrick Connor, National Federation of Independent Business.

(Other) Aaron Keating, Economic Opportunity Institute Seattle.

Persons Signed In To Testify But Not Testifying: None.