
SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL 5740

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 new sections; 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 13 of this act unless the context
7 clearly requires otherwise.

8 (1) "Administrative fee" means the amount deducted from the
9 investment fund of a covered employee and used to pay the costs
10 associated with administering the program.

11 (2) "Administrative fund" means the secure choice retirement
12 savings administrative fund established under section 7 of this act.

13 (3) "Commissioner" means the commissioner of the employment
14 security department.

15 (4) "Compensation" means compensation within the meaning of
16 section 219(f)(1) of the internal revenue code that is received by a
17 covered employee from a covered employer or a professional employer
18 organization, as such term is defined in RCW 50.04.298.

19 (5) "Contribution rate" means the percentage of a covered
20 employee's compensation that is withheld from his or her compensation
21 and paid to the IRA established for the covered employee under the
22 program.

23 (6) "Covered employee" means any individual who is eighteen years
24 of age or older, who is in the employment of a covered employer, and
25 who has compensation that is allocable to the state. For purposes of
26 the investment, fee, withdrawal, transfer, rollover, or other
27 distribution of an IRA, the term covered employee also includes the
28 beneficiary of a deceased covered employee and an "alternate payee"
29 under state domestic relations law. For purposes of sections 2
30 through 13 of this act, a covered employee, as defined in this
31 subsection, who is performing services for a client employer that has
32 entered into a professional employer agreement with a professional
33 employer organization, as such terms are defined in RCW 50.04.298,
34 must be treated as in the employment of the client employer and not
35 by the professional employer organization.

36 (7) "Covered employer" means an employer that either:

37 (a) Satisfies the following requirements:

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

1 (ii) Has not sponsored, maintained, or contributed to a
2 retirement plan under sections 401(a), 401(k), 403(a), 403(b),
3 408(k), or 408(p) of the internal revenue code, including such a plan
4 sponsored or maintained by a professional employer organization with
5 which the employer has a professional employer agreement, as such
6 terms are defined in RCW 50.04.298, at any time during the preceding
7 two calendar years and does not currently sponsor, maintain, or
8 contribute to a retirement plan; and

9 (iii) Has more than five individuals in employment. For purposes
10 of this subsection (7)(a)(iii), the size of the employer for a
11 calendar year shall be determined by averaging the number of
12 employees reported by the employer pursuant to RCW 50A.20.030 over
13 the four completed quarters immediately preceding July 1st in the
14 immediately previous year; or

15 (b) Elects to be a covered employer if and as permitted in
16 accordance with rules and procedures established by the commissioner.

17 (8) "Employer" means a person or entity engaged in a business,
18 profession, trade, or other enterprise in the state, whether for
19 profit or not for profit; provided that a federal or state entity,
20 agency, or instrumentality, or any political subdivision thereof, is
21 not an employer.

22 (9) "Employment" has the same meaning as in RCW 50A.05.010.

23 (10) "Internal revenue code" means the federal internal revenue
24 code of 1986, as amended.

25 (11) "Investment adviser" means:

26 (a) An investment adviser registered under the federal investment
27 advisers act of 1940; or

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

30 (12) "Investment fund" means each investment portfolio
31 established by the commissioner within the trust for investment
32 purposes.

33 (13) "IRA" means either an individual retirement account or
34 individual retirement annuity established under section 408 or 408A
35 of the internal revenue code.

36 (14) "Program" means the secure choice retirement savings program
37 established under sections 2 through 13 of this act.

38 (15) "Trust" means the IRA retirement trust or annuity contract
39 established under section 8 of this act.

1 (16) "Trustee" means the trustee of the trust, including an
2 insurance company issuing an annuity contract, selected by the
3 commissioner under section 8 of this act.

4 NEW SECTION. **Sec. 4.** (1) The commissioner has the following
5 powers and duties:

6 (a) To design, establish, and operate the program in accordance
7 with the requirements set forth in sections 2 through 13 of this act;

8 (b) To collect administrative fees to defray the costs of
9 administering the program;

10 (c) To enter into contracts necessary or desirable for the
11 establishment and administration of the program;

12 (d) To hire, retain, and terminate other state or nonstate
13 entities as the commissioner deems necessary or desirable for all or
14 part of the services necessary for the management of the program
15 including, but not limited to, consultants, investment advisers,
16 trustees, custodians, insurance companies, recordkeepers,
17 administrators, actuaries, counsel, auditors, and other
18 professionals; provided that each service provider must be authorized
19 to do business in this state;

20 (e) To determine the type or types of IRAs to be offered; the
21 default contribution rate, provided that the default contribution
22 rate is no less than three percent and no more than ten percent of a
23 covered employee's compensation; and the automatic escalation rate
24 provided that the contribution rate is no more than ten percent;

25 (f) To employ a program director and such other individuals as
26 the commissioner determines to be necessary or desirable to
27 administer the program and the administrative fund;

28 (g) To develop and implement an outreach plan to gain input and
29 disseminate information regarding the program and retirement and
30 financial education in general, to employees, employers, and other
31 constituents in the state;

32 (h) To prescribe the records covered employers must maintain, and
33 to inspect and make copies of such records at any reasonable time and
34 as often as may be necessary;

35 (i) To develop and implement a marketing strategy for the program
36 that includes outreach to communities of color and encourages small
37 business engagement;

1 (j) To determine the number of days by which an eligible employer
2 must make the program available to a covered employee upon first
3 becoming an eligible employer or covered employee;

4 (k) To adopt rules and procedures for the establishment and
5 operation of the program and to take such other actions necessary or
6 desirable to establish and operate the program in accordance with
7 sections 2 through 13 of this act.

8 (2) The commissioner shall use the following principles in the
9 design and operation of the program:

10 (a) Operate with reasonable costs but sufficient to ensure that
11 the program is sustainable;

12 (b) Structure the program so that covered employees are
13 automatically enrolled and covered employer participation is
14 required;

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

18 (d) Provide customer service processes to any and all pertinent
19 persons and disseminate program information to covered employers and
20 covered employees;

21 (e) Monitor the investment adviser's financial management
22 policies, processes, and performance.

23 (3) Other state agencies must provide appropriate and reasonable
24 assistance to the commissioner as needed, including gathering data
25 and information, in order for the commissioner to carry out the
26 purpose of sections 2 through 13 of this act. The commissioner may
27 reimburse the other state agencies from the administrative fund
28 established in section 7 of this act for reasonable expenses incurred
29 in providing appropriate and reasonable assistance.

30 (4) The commissioner shall not impose any obligations on the
31 state, nor may it pledge the credit of the state.

32 (5) The commissioner, in consultation with the legislature, has
33 the discretion to establish an advisory board of individuals with
34 experience in investments or retirement plan oversight and
35 management.

36 (6) The commissioner, in consultation with the state investment
37 board and the department of financial institutions, has discretion to
38 establish and maintain the program by: Contracting with another state
39 to use that state's auto-IRA program, partnering with one or more
40 states to create a joint auto-IRA program that includes the program,

1 or forming a consortium with one or more other states in which
2 certain aspects of each state's program are combined for
3 administrative convenience and efficiency, provided that in any such
4 case, the auto-IRA program used, the joint program, or the consortium
5 otherwise satisfies the requirements of this chapter.

6 NEW SECTION. **Sec. 5.** (1) The commissioner, the trustee, and
7 each investment adviser or other person which has discretionary
8 control of the assets of the trust shall be a fiduciary with respect
9 to the trust and IRAs established and maintained under the program.

10 (2) Each covered employer is required to provide covered
11 employees with such information as the commissioner directs. No
12 employer acting as such is a fiduciary with respect to the trust or
13 an IRA or has fiduciary responsibilities under sections 2 through 13
14 of this act.

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

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

24 (1) Each covered employer is required to offer to each covered
25 employee an opportunity to contribute to an IRA established under the
26 program for the benefit of the covered employee through withholding
27 from his or her compensation. No employer is permitted to contribute
28 to the program or to endorse or otherwise promote the program.

29 (2) Unless the covered employee chooses otherwise, he or she
30 shall be automatically enrolled in the program and contributions
31 shall be withheld from such covered employee's compensation at a rate
32 set by the commissioner unless the covered employee elects not to
33 contribute or to contribute at a different rate.

34 (3) The contribution rate of each covered employee shall be
35 increased at such rate and at such intervals as from time to time
36 established by the commissioner, unless the covered employee elects
37 not to have such automatic increases apply.

1 (4) The contribution rate of each covered employee shall be
2 applied whenever a covered employer compensates a covered employee. A
3 covered employer may not withhold contributions in lump sums from a
4 covered employee.

5 (5) An individual who no longer meets the definition of a covered
6 employee solely because the number of individuals in the employment
7 of the individual's employer is reduced from more than five to five
8 or less must be permitted to continue to contribute to the IRA
9 established for the individual's benefit without the participation of
10 the individual's employer.

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

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

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

22 (9) The commissioner shall determine the rules and procedures for
23 withdrawals, distributions, transfers, and rollovers of IRAs and for
24 the designation of IRA beneficiaries.

25 (10) The commissioner shall report annually to the governor and
26 the legislature outlining the commissioner's activities and the
27 program's operations.

28 (11) The commissioner shall cause to be furnished to each covered
29 employer and may provide directly to covered employees:

30 (a) Information regarding the program;

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

32 Such disclosures must include:

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

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

37 (iii) A description of the tax consequences of an IRA, which may
38 consist of or include the disclosure statement required to be
39 distributed by the trustee under the internal revenue code and the
40 treasury regulations thereunder;

1 (iv) A statement that covered employees seeking financial advice
2 should contact their own financial advisers and that covered
3 employers are not in a position to provide financial advice and that
4 covered employers are not liable for decisions covered employees make
5 under sections 2 through 13 of this act;

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

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

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

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

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

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

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

35 (12) Each covered employer shall deliver or facilitate the
36 delivery of the items set forth in subsection (11)(b) and (c) of this
37 section to each covered employee at such time and in such manner as
38 determined by the commissioner.

39 (13) The program must be designed and operated in a manner that
40 will cause it not to be an employee benefit plan within the meaning

1 of section 3(3) of the employee retirement income security act of
2 1974. If any provision of this act is found to be in conflict with
3 federal law or regulations, including the employee retirement income
4 security act of 1974, the conflicting provision of this act is
5 declared to be inoperative solely to the extent of the conflict, and
6 that finding or determination shall not affect the operation of the
7 remainder of this act.

8 (14) Nothing in sections 2 through 13 of this act prohibits a
9 covered employer from contracting with a third party, such as a
10 payroll service provider or a professional employer organization, to
11 assist such employer with the tasks required of a covered employer
12 under sections 2 through 13 of this act.

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

27 (2) The fund is authorized to maintain a cash deficit in the fund
28 for a period of no more than eight fiscal years after the
29 implementation of the secure choice retirement savings program to
30 defray its initial program administration costs. By January 1, 2021,
31 the commissioner shall establish a program administration spending
32 plan and an administrative fee schedule to discharge any projected
33 cash deficit to the fund. The legislature may make appropriations
34 into the fund for the purpose of reducing program administration
35 costs.

36 (3) Administrative fees may be used to contract with another
37 state to use that state's program or to create a joint program or
38 consortium with one or more states offering an existing program. No

1 other state funds may be used to contract or partner with one or more
2 other states.

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

6 (1) The commissioner shall appoint an institution qualified to
7 act as trustee of IRA trusts or insurance company issuing annuity
8 contracts under section 408 of the internal revenue code and licensed
9 to do business in the state to act as trustee.

10 (2) The assets of IRAs established for covered employees must be
11 allocated to the trust and combined for investment purposes. Trust
12 assets must be managed and administered for the exclusive purposes of
13 providing benefits to covered employees and defraying reasonable
14 expenses of administering and maintaining, and managing investments,
15 of the IRAs and the trust, including the expenses of the commissioner
16 under this act.

17 (3) The commissioner shall establish within the trust one or more
18 investment funds, each pursuing an investment strategy and policy
19 established by the commissioner. The underlying investments of each
20 investment fund shall be diversified, to the extent the commissioner
21 determines to be appropriate, so as to minimize the risk of large
22 losses under the circumstances. The commissioner may, at any time and
23 from time to time, add, replace, or remove any investment fund.

24 (4) The commissioner may allow covered employees to allocate
25 assets of their IRAs among such investment funds and in such case,
26 the commissioner also may designate an investment fund as a default
27 investment for the IRAs of covered employees who do not make an
28 investment choice.

29 (5) Subject to subsection (6) of this section, the commissioner,
30 in consultation with such third-party professional investment
31 advisers, managers, or consultants as it may retain, shall select the
32 underlying investments of each investment fund. Such underlying
33 investments may include, without limitation, shares of mutual funds
34 and exchange-traded funds, publicly traded equity, and fixed-income
35 securities, and other investments available for investment by the
36 trust. No investment fund may invest in any bond, debt instrument, or
37 other security issued by this state.

38 (6) The commissioner may, in its discretion, retain an investment
39 adviser to select and manage the investments of an investment fund on

1 a discretionary basis, subject to the commissioner's ongoing review
2 and oversight.

3 (7) The trustee is subject to directions of the commissioner
4 under subsection (5) of this section or an investment adviser under
5 subsection (6) of this section and otherwise has no responsibility
6 for the selection, retention, or disposition of trust investments or
7 assets.

8 (8) The assets of the trust must at all times be preserved,
9 invested, and expended solely for the purposes of the trust and no
10 property rights therein shall exist in favor of the state or any
11 covered employer. Trust assets may not be transferred or used by the
12 state for any purposes other than the purposes of the trust or
13 funding the expenses of operating the program, including the expenses
14 of the commissioner. Amounts deposited with the trustee are not
15 property of the state and may not be commingled with state funds and
16 the state has no claim to or against, or interest in, the trust
17 assets.

18 (9) The assets of the trust shall at all times be held separate
19 and apart from the assets of the state. None of the state, the
20 program, the commissioner, nor any employer may guaranty any
21 investment, rate of return, or interest on amounts held in the trust,
22 an investment fund, or any IRA. None of the state, the program, the
23 commissioner, or any employer is liable for any losses incurred by
24 trust investments or otherwise by any covered employee or other
25 person as a result of participating in the program except for any
26 liability that arises out of such person's breach of fiduciary duty
27 under section 5 of this act. The state, the program, the
28 commissioner, or any employer is not liable for the payment of
29 benefits earned by participating employees.

30 (10) Any security issued, managed, or invested by the
31 commissioner within the secure choice retirement savings trust on
32 behalf of an individual participating in the program is exempt from
33 RCW 21.20.140.

34 (11) The trust is authorized to engage in trust business under
35 Title 30B RCW and is exempt from the requirement to obtain a
36 certificate of authority from the department of financial
37 institutions under Title 30B RCW.

38 (12) If the commissioner determines to exercise his or her
39 discretion under section 4(6) of this act to establish the program by
40 using another state's auto-IRA program, establishing a joint program,

1 or a consortium with one or more other states, then the trust may be
2 established by adopting the trust established under such other
3 state's program or as a master trust or similar arrangement with such
4 other states, provided that such trust, master trust, or similar
5 arrangement otherwise satisfies the requirements of this section.

6 NEW SECTION. **Sec. 9.** (1) If the commissioner determines to
7 exercise his or her discretion under section 4(6) of this act:

8 (a) Only the secure choice retirement savings administrative fund
9 may be used to contract with another state to use that state's
10 program or to create a joint program or consortium with one or more
11 states offering an existing program.

12 (b) The rate of the administrative fee for covered employees may
13 not exceed the rate charged to employees of another state
14 participating in the same program.

15 (2) If the commissioner determines to not exercise his or her
16 authority under section 4(5) of this act, the rate of the
17 administrative fee for covered employees may not exceed one and five-
18 hundredths percent.

19 NEW SECTION. **Sec. 10.** (1) The commissioner may establish a
20 pilot program for covered employers to auto enroll employees into an
21 IRA by January 1, 2021. The commissioner may also provide for a
22 staggered rollout of the program so that covered employers are
23 initially required to offer the program to covered employees in
24 stages based on employee headcount or such other criteria as may be
25 established by the commissioner.

26 (2) The commissioner shall make the secure choice retirement
27 savings program available to all covered employees no earlier than
28 January 1, 2022, and no later than January 1, 2023.

29 NEW SECTION. **Sec. 11.** (1) Any information or records concerning
30 an individual or employer obtained by the commissioner pursuant to
31 the administration of this act shall be private and confidential,
32 except as otherwise provided in this section.

33 (2) If information provided to the commissioner by another
34 governmental agency is held private and confidential by state or
35 federal law, the commissioner may not release such information,
36 unless otherwise provided by this section.

1 (3) Information provided to the commissioner by another
2 governmental entity conditioned upon privacy and confidentiality
3 under a provision of law is to be held private and confidential
4 according to the agreement between the commissioner and the other
5 governmental agency unless otherwise provided by this section.

6 (4) If the commissioner determines to exercise his or her
7 discretion under section 4(5) of this act to establish the program by
8 using another state's auto-IRA program, establishing a joint program,
9 or a consortium with one or more other states, then the laws of the
10 state that is most protective of individual and employer
11 confidentiality shall govern.

12 (5) The commissioner may disclose information or records deemed
13 private and confidential under this chapter to any private person or
14 organization, including the trustee, and by extension, the agents of
15 any private person or organization, when the disclosure is necessary
16 to permit private contracting parties to assist in the operation,
17 management, and implementation of the program. The private person or
18 organization shall use the information or records solely for the
19 purpose for which the information was disclosed and are bound by the
20 same rules of privacy and confidentiality as the commissioner.

21 (6) An individual shall have access to all records and
22 information concerning that individual held by the commissioner
23 unless the information is exempt from disclosure under RCW 42.56.410.

24 (7) An employer shall have access to its own records relating to
25 any audit conducted or penalty assessed by the commissioner under
26 this chapter.

27 (8) No decision by the commissioner or the appeals tribunal shall
28 be deemed private and confidential under this section unless the
29 decision is based on information obtained in a closed hearing.

30 (9) Information or records deemed private and confidential under
31 this section shall be available to parties to judicial or formal
32 administrative proceedings only upon a written finding by the
33 presiding officer that the need for the information or records in the
34 proceeding outweighs any reasons for the privacy and confidentiality
35 of the information or records.

36 (10) Nothing in this chapter shall prevent the disclosure of
37 information or records deemed private and confidential under this
38 section if all details identifying an individual or employer are
39 deleted so long as the information or records cannot be foreseeably

1 combined with other publicly available information to reveal the
2 identity of an individual or employer.

3 (11)(a) All private persons, governmental agencies, and
4 organizations authorized to receive information from the commissioner
5 under this chapter have an affirmative obligation to take all
6 reasonable actions necessary to prevent the disclosure of
7 confidential information.

8 (b) The disclosure of any records or information by a private
9 person, governmental agency, or organization that obtained the
10 records or information from the commissioner under this section is
11 prohibited unless expressly permitted by this section.

12 (c) If misuse or an unauthorized disclosure of confidential
13 records or information occurs, all parties who are aware of the
14 violation must inform the commissioner immediately and must take all
15 reasonably available actions to rectify the disclosure to the
16 commissioner's standards.

17 (d) The misuse or unauthorized release of records or information
18 deemed private and confidential under this chapter by any private
19 person, governmental agency, or organization to which access is
20 permitted by this section shall subject the person, governmental
21 agency, or organization to a civil penalty of up to twenty thousand
22 dollars in the first year of the program and annually adjusted by the
23 commissioner based on changes in the United States consumer price
24 index for all urban consumers. Other applicable sanctions under state
25 and federal law also apply.

26 (e) Suit to enforce this section shall be brought by the attorney
27 general and the amount of any penalties collected shall be paid into
28 the secure choice retirement savings administrative fund established
29 in section 7 of this act. The attorney general may recover reasonable
30 attorneys' fees for any action brought to enforce this section.

31 (12) This section does not contain a rule of evidence.

32 NEW SECTION. **Sec. 12.** (1) A covered employer who fails, without
33 reasonable cause, as defined by the commissioner in rule, to
34 facilitate the enrollment of eligible employees in the program, shall
35 pay a penalty for each employee for each year or portion of a year
36 the employer failed to facilitate the enrollment of the employee. The
37 penalty shall start at two hundred fifty dollars for each employee
38 for which the employer has failed to facilitate the enrollment of the
39 employee for the first year of the program and shall be annually

1 adjusted by the commissioner based on changes in the United States
2 consumer price index for all urban consumers.

3 (2) The commissioner shall have the same rights to collect
4 penalties charged pursuant to this chapter as those contained in
5 chapter 50A.45 RCW, so long as the employer is offered the same
6 rights to appeal any order and notice of assessment as those
7 contained in chapter 50A.50 RCW. The remedies provided in chapter
8 50A.50 RCW for determining the justness or correctness of the
9 penalties charged shall be exclusive and no court shall entertain any
10 action to enjoin an assessment or require a refund or adjustment
11 except in accordance with the provisions of chapter 50A.50 RCW.

12 (3) Penalties charged pursuant to this chapter shall be deposited
13 in the secure choice retirement savings administrative fund
14 established in section 7 of this act.

15 (4) The commissioner shall not assess penalties to covered
16 employers until July 1, 2025.

17 NEW SECTION. **Sec. 13.** (1) The commissioner must develop an
18 implementation plan that details how the employment security
19 department will design, establish, operate, and market the program
20 under sections 2 through 10 of this act.

21 (2) By December 1, 2020, and in compliance with RCW 43.01.036,
22 the commissioner must submit a report to the appropriate committees
23 of the legislature describing the implementation plan.

24 (3) Beginning on December 1st of the first year after fully
25 implementing the program, the commissioner must report annually on
26 administrative fees. The report shall include:

27 (a) A financial update on the status of the secure choice
28 retirement savings administrative fund;

29 (b) The administrative fee cost basis assigned to each state
30 participating in the program;

31 (c) The uses of administrative fees; and

32 (d) A plan to reduce the administrative fee cost basis for
33 covered employees as the assets under management in the secure choice
34 retirement savings trust increase over time.

35 NEW SECTION. **Sec. 14.** RCW 43.330.730 (Finding—2015 c 296) is
36 decodified.

1 **Sec. 15.** RCW 43.330.732 and 2015 c 296 s 2 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this subchapter
4 unless the context clearly requires otherwise.

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

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

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

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

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

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

28 ~~((7))~~ (6) "Private sector financial services firms" or
29 "financial services firms" mean persons or entities licensed or
30 holding a certificate of authority and in good standing by either the
31 department of financial institutions or the office of the insurance
32 commissioner and meeting all federal laws and regulations to offer
33 retirement plans.

34 ~~((8))~~ (7) "Qualified employee" means those workers who are
35 defined by the federal internal revenue service to be eligible to
36 participate in a specific qualified plan.

37 ~~((9))~~ (8) "Target date or other similar fund" means a hybrid
38 mutual fund that automatically resets the asset mix of stocks, bonds,
39 and cash equivalents in its portfolio according to a selected time

1 frame that is appropriate for a particular investor. A target date is
2 structured to address a projected retirement date.

3 ~~((10))~~ (9) "Washington small business retirement marketplace"
4 or "marketplace" means the retirement savings program created to
5 connect eligible employers and their employees with approved plans to
6 increase retirement savings.

7 **Sec. 16.** RCW 43.330.735 and 2017 c 69 s 1 are each amended to
8 read as follows:

9 (1) The Washington small business retirement marketplace is
10 created.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (12) Participation in the Washington small business retirement
39 marketplace is voluntary for both eligible employers and qualified
40 employees.

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

3 **Sec. 17.** RCW 43.79A.040 and 2019 c 448 s 10, 2019 c 363 s 21,
4 2019 c 295 s 225, 2019 c 282 s 7, 2019 c 266 s 26, and 2019 c 157 s 4
5 are each reenacted and amended to read as follows:

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

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

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

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

25 (b) The following accounts and funds must receive their
26 proportionate share of earnings based upon each account's or fund's
27 average daily balance for the period: The 24/7 sobriety account, the
28 Washington promise scholarship account, the Gina Grant Bull memorial
29 legislative page scholarship account, the Washington advanced college
30 tuition payment program account, the Washington college savings
31 program account, the accessible communities account, the Washington
32 achieving a better life experience program account, the community and
33 technical college innovation account, the agricultural local fund,
34 the American Indian scholarship endowment fund, the foster care
35 scholarship endowment fund, the foster care endowed scholarship trust
36 fund, the contract harvesting revolving account, the Washington state
37 combined fund drive account, the commemorative works account, the
38 county enhanced 911 excise tax account, the county road
39 administration board emergency loan account, the toll collection

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

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. 18.** RCW 30B.04.040 and 2019 c 389 s 4 are each amended to
15 read as follows:

16 A person is exempt from the requirement of a certificate of
17 authority or approval under this title if the person is:

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

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

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

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

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

35 (6) Acting as an escrow agent pursuant to the escrow agent
36 registration act, chapter 18.44 RCW, or in one's capacity as an
37 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 commodities or securities transaction or
8 providing an investment advisory service in the capacity of a
9 registered broker-dealer, investment ~~((adviser))~~ adviser, or
10 registered representative thereof, provided the activity is regulated
11 by the department, the United States commodities futures trading
12 commission, or the United States securities and exchange commission;

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

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

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

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

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

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

32 NEW SECTION. **Sec. 19.** If any part of this act is found to be in
33 conflict with federal requirements that are a prescribed condition to
34 the allocation of federal funds to the state or the eligibility of
35 employers in this state for federal unemployment tax credits, the
36 conflicting part of this act is inoperative solely to the extent of
37 the conflict, and the finding or determination does not affect the
38 operation of the remainder of this act. Rules adopted under this act
39 must meet federal requirements that are a necessary condition to the

1 receipt of federal funds by the state or the granting of federal
2 unemployment tax credits to employers in this state.

3 NEW SECTION. **Sec. 20.** Sections 2 through 13 of this act are
4 each added to chapter 43.330 RCW.

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