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**SENATE BILL 5740**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Mullet, Hobbs, Conway, and Van De Wege

Read first time 01/30/19. Referred to Committee on Financial Institutions, Economic Development & Trade.

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 a new section; 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 10 of this act unless the context  
7 clearly requires otherwise.

8 (1) "Administrative fund" means the secure choice retirement  
9 savings administrative fund established under section 7 of this act.

10 (2) "Compensation" means compensation within the meaning of  
11 section 219(f)(1) of the internal revenue code that is received by a  
12 covered employee from a covered employer.

13 (3) "Contribution rate" means the percentage of a covered  
14 employee's compensation that is withheld from his or her compensation  
15 and paid to the IRA established for the covered employee under the  
16 program.

17 (4) "Covered employee" means any individual who is twenty-one  
18 years of age or older, who is employed by a covered employer, and who  
19 has compensation that is allocable to the state. For purposes of the  
20 investment, withdrawal, transfer, rollover, or other distribution of  
21 an IRA, the term covered employee also includes the beneficiary of a  
22 deceased covered employee and an "alternate payee" under state  
23 domestic relations law.

24 (5) "Covered employer" means an employer that either:

25 (a) Satisfies both of the following requirements:

26 (i) Has been in business for at least two years; and

27 (ii) Has not sponsored, maintained, or contributed to a  
28 retirement plan under sections 401(a), 401(k), 403(a), 403(b),  
29 408(k), or 408(p) of the internal revenue code at any time during the  
30 preceding two calendar years and does not currently sponsor,  
31 maintain, or contribute to a retirement plan; or

32 (b) Elects to be a covered employer if and as permitted in  
33 accordance with rules and procedures established by the director.

34 (6) "Director" means the director of the department of commerce.

35 (7) "Employer" means a person or entity engaged in a business,  
36 profession, trade, or other enterprise in the state, whether for  
37 profit or not for profit, that employs one or more individuals in the  
38 state; provided that a federal or state entity, agency, or

1 instrumentality, or any political subdivision thereof, is not an  
2 employer.

3 (8) "Internal revenue code" means the federal internal revenue  
4 code of 1986, as amended.

5 (9) "Investment advisor" means:

6 (a) An investment advisor registered under the federal investment  
7 advisers act of 1940; or

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

10 (10) "Investment fund" means each investment portfolio  
11 established by the director within the trust for investment purposes.

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

15 (12) "Program" means the secure choice retirement savings program  
16 established under sections 2 through 10 of this act.

17 (13) "Trust" means the IRA retirement trust or annuity contract  
18 established under section 8 of this act.

19 (14) "Trustee" means the trustee of the trust, including an  
20 insurance company issuing an annuity contract, selected by the  
21 director under section 8 of this act.

22 NEW SECTION. **Sec. 4.** (1) The director has the following powers  
23 and duties:

24 (a) To design, establish, and operate the program in accordance  
25 with the requirements set forth in sections 2 through 10 of this act.

26 (b) To collect fees to defray the costs of administering the  
27 program.

28 (c) To enter into contracts necessary or desirable for the  
29 establishment and administration of the program.

30 (d) To hire, retain, and terminate other state or nonstate  
31 entities as the director deems necessary or desirable for all or part  
32 of the services necessary for the management of the program,  
33 including, but not limited to, consultants, investment advisors,  
34 trustees, custodians, insurance companies, recordkeepers,  
35 administrators, actuaries, counsel, auditors, and other  
36 professionals; provided that each service provider must be authorized  
37 to do business in this state.

38 (e) To determine the type or types of IRAs to be offered, the  
39 default contribution rate and automatic escalation rate.

1 (f) To employ a program director and such other individuals as  
2 the director determines to be necessary or desirable to administer  
3 the program and the administrative fund.

4 (g) To develop and implement an outreach plan to gain input and  
5 disseminate information regarding the program and retirement and  
6 financial education in general, to employees, employers, and other  
7 constituents in the state.

8 (h) To determine the number of days by which an eligible employer  
9 must make the program available to a covered employee upon first  
10 becoming an eligible employer or covered employee.

11 (i) To adopt rules and procedures for the establishment and  
12 operation of the program and to take such other actions necessary or  
13 desirable to establish and operate the program in accordance with  
14 sections 2 through 10 of this act.

15 (2) The director shall use the following principles in the design  
16 and operation of the program:

17 (a) Operate with low costs but sufficient to ensure that the  
18 program is sustainable;

19 (b) Structure the program so that covered employees are  
20 automatically enrolled and covered employer participation is  
21 required;

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

25 (d) Provide customer service processes to any and all pertinent  
26 persons and disseminate program information to covered employers and  
27 covered employees;

28 (e) Monitor the investment advisor's financial management  
29 policies, processes, and performance.

30 (3) Other state agencies must provide appropriate and reasonable  
31 assistance to the director as needed, including gathering data and  
32 information, in order for the director to carry out the purpose of  
33 sections 2 through 10 of this act.

34 (4) The director shall not impose any obligations on the state,  
35 nor may it pledge the credit of the state.

36 (5) The director, in consultation with the state investment board  
37 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 director, the trustee, and each  
7 investment adviser or other person which has control of the assets of  
8 the trust shall be a fiduciary with respect to the trust and IRAs  
9 established and maintained under the program.

10 (2) Each covered employer is required to provide covered  
11 employees with such information as the director directs. No employer  
12 acting as such is a fiduciary with respect to the trust or an IRA or  
13 has fiduciary responsibilities under sections 2 through 10 of this  
14 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 director 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 director, unless the covered employee elects not  
37 to have such automatic increases apply.

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

3 (5) The director may establish intervals after which a covered  
4 employee must reaffirm elections, including opt-out elections, with  
5 regard to participation or escalation.

6 (6) Each covered employer shall deposit covered employees'  
7 withheld contributions under the program with the trustee in such  
8 manner as is determined by the director, provided that the employer  
9 shall deliver the amounts withheld to the trustee in good order  
10 within ten business days after the date such amounts otherwise would  
11 have been paid to the covered employee.

12 (7) The director shall determine the rules and procedures for  
13 withdrawals, distributions, transfers, and rollovers of IRAs and for  
14 the designation of IRA beneficiaries.

15 (8) The director shall report annually to the governor and the  
16 legislature outlining the director's activities and the program's  
17 operations.

18 (9) The director shall cause to be furnished to each covered  
19 employer:

20 (a) Information regarding the program;

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

22 Such disclosures must include:

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

25 (ii) Instructions about how to obtain additional information  
26 about the program;

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

31 (iv) A statement that covered employees seeking financial advice  
32 should contact their own financial advisors and that covered  
33 employers are not in a position to provide financial advice and that  
34 covered employers are not liable for decisions covered employees make  
35 under sections 2 through 10 of this act;

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

38 (vi) A statement that neither the program nor the covered  
39 employee's IRA established under the program is guaranteed by the  
40 state;

1 (vii) A statement that neither a covered employer nor the state  
2 will monitor or has an obligation to monitor the covered employee's  
3 eligibility under the internal revenue code to make contributions to  
4 an IRA or to monitor whether the covered employee's contributions to  
5 the IRA established for the covered employee under the program exceed  
6 the maximum permissible IRA contribution; that it is the covered  
7 employee's responsibility to monitor such matters; and that the  
8 state, the program, and the covered employer have no liability with  
9 respect to any failure of the covered employee to be eligible to make  
10 IRA contributions or any contribution in excess of the maximum IRA  
11 contribution;

12 (c) Information, forms, and instructions to be furnished to  
13 covered employees at such times as the director determines that  
14 provide the covered employee with the procedures for:

15 (i) Making contributions to the covered employee's IRA  
16 established under the program, including a description of the  
17 automatic enrollment rate, the automatic escalation rate and  
18 frequency, and the right to elect to make no contribution or to  
19 change the contribution rate under the program;

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

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

25 (10) Each covered employer shall deliver or facilitate the  
26 delivery of the items set forth in subsection (9)(b) and (c) of this  
27 section to each covered employee at such time and in such manner as  
28 determined by the director.

29 (11) The program must be designed and operated in a manner that  
30 will cause it not to be an employee benefit plan within the meaning  
31 of section 3(3) of the employee retirement income security act of  
32 1974.

33 NEW SECTION. **Sec. 7.** (1) The secure choice retirement savings  
34 administrative fund is hereby established in the custody of the state  
35 treasurer as a nonappropriated account separate and apart from the  
36 trust. The director shall use moneys in the administrative fund to  
37 pay for administrative expenses it incurs in the performance of its  
38 duties under sections 2 through 10 of this act. The administrative  
39 fund may receive any grants or other moneys designated for the

1 administrative fund from the state, or any unit of federal or local  
2 government, or any other person. Any interest earnings that are  
3 attributable to moneys in the administrative fund must be deposited  
4 into the administrative fund. Only the director may authorize  
5 expenditures from the account. The account is subject to allotment  
6 procedures under chapter 43.88 RCW, but an appropriation is not  
7 required for expenditures.

8 (2) The account is authorized to maintain a cash deficit in the  
9 account for a period no more than five fiscal years to defray its  
10 initial program administration costs. By January 1, 2020, the  
11 governing body shall establish a program administration spending plan  
12 and a fee schedule to discharge any projected cash deficit to the  
13 account. The legislature may make appropriations into the account for  
14 the purpose of reducing program administration costs.

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

18 (1) The director shall appoint an institution qualified to act as  
19 trustee of IRA trusts or insurance company issuing annuity contracts  
20 under section 408 of the internal revenue code and licensed to do  
21 business in the state to act as trustee.

22 (2) The assets of IRAs established for covered employees must be  
23 allocated to the trust and combined for investment purposes. Trust  
24 assets must be managed and administered for the exclusive purposes of  
25 providing benefits to covered employees and defraying reasonable  
26 expenses of administering and maintaining, and managing investments,  
27 of the IRAs and the trust, including the expenses of the director  
28 under section 4 of this act.

29 (3) The director shall establish within the trust one or more  
30 investment funds, each pursuing an investment strategy and policy  
31 established by the director. The underlying investments of each  
32 investment fund shall be diversified, to the extent the director  
33 determines to be appropriate, so as to minimize the risk of large  
34 losses under the circumstances. The director may, at any time and  
35 from time to time, add, replace, or remove any investment fund.

36 (4) The director may allow covered employees to allocate assets  
37 of their IRAs among such investment funds and in such case, the  
38 director also may designate an investment fund as a default



1 investment for the IRAs of covered employees who do not make an  
2 investment choice.

3 (5) Subject to subsection (6) of this section, the director, in  
4 consultation with such third-party professional investment advisers,  
5 managers, or consultants as it may retain, shall select the  
6 underlying investments of each investment fund. Such underlying  
7 investments may include, without limitation, shares of mutual funds  
8 and exchange-traded funds, publicly traded equity, and fixed-income  
9 securities, and other investments available for investment by the  
10 trust. No investment fund may invest in any bond, debt instrument, or  
11 other security issued by this state.

12 (6) The director may, in its discretion, retain an investment  
13 adviser to select and manage the investments of an investment fund on  
14 a discretionary basis, subject to the director's ongoing review and  
15 oversight.

16 (7) The trustee is subject to directions of the director under  
17 subsection (5) of this section or an investment adviser under  
18 subsection (6) of this section and otherwise has no responsibility  
19 for the selection, retention, or disposition of trust investments or  
20 assets.

21 (8) The assets of the trust must at all times be preserved,  
22 invested, and expended solely for the purposes of the trust and no  
23 property rights therein shall exist in favor of the state or any  
24 covered employer. Trust assets may not be transferred or used by the  
25 state for any purposes other than the purposes of the trust or  
26 funding the expenses of operating the program, including the expenses  
27 of the director. Amounts deposited with the trustee are not property  
28 of the state and may not be commingled with state funds and the state  
29 has no claim to or against, or interest in, the trust assets.

30 (9) The assets of the trust shall at all times be held separate  
31 and apart from the assets of the state. None of the state, the  
32 program, the director, nor any employer may guaranty any investment,  
33 rate of return, or interest on amounts held in the trust, an  
34 investment fund, or any IRA. None of the state, the program, the  
35 director, or any employer is liable for any losses incurred by trust  
36 investments or otherwise by any covered employee or other person as a  
37 result of participating in the program.

38 (10) The provisions of chapter 21.20 RCW do not apply to the  
39 trust, any investment fund, or any interest held by an IRA in the  
40 trust or such investment fund.

1 (11) The trust is authorized to engage in trust business under  
2 Title 30B RCW and is exempt from the requirement to obtain a  
3 certificate of authority from the department of financial  
4 institutions under Title 30B RCW.

5 (12) If the director determines to exercise his or her discretion  
6 under section 4(5) of this act to establish the program by using  
7 another state's auto-IRA program, establishing a joint program, or a  
8 consortium with one or more other states, then the trust may be  
9 established by adopting the trust established under such other  
10 state's program or as a master trust or similar arrangement with such  
11 other states, provided that such trust, master trust, or similar  
12 arrangement otherwise satisfies the requirements of this section.

13 NEW SECTION. **Sec. 9.** (1) The department of revenue has the  
14 power and duty to ensure employer compliance with section 6 of this  
15 act, as part of its existing investigation and audit functions.

16 (2) Beginning June 30, 2021, each covered employer that, without  
17 good cause, fails to allow its covered employees to participate in  
18 the secure choice retirement savings program pursuant to section 6 of  
19 this act, on or before one-hundred eighty days after service of  
20 notice by the department of revenue, shall pay a penalty of two  
21 hundred fifty dollars if noncompliance extends one-hundred eighty  
22 days or more after the notice, and if found to be in noncompliance  
23 one hundred eighty days or more after the notice, an additional  
24 penalty of five hundred dollars.

25 NEW SECTION. **Sec. 10.** The director may establish a pilot  
26 program for covered employers to auto enroll employees into an IRA by  
27 January 1, 2020. The director may also provide for a staggered  
28 rollout of the program so that covered employers are initially  
29 required to offer the program to covered employees in stages based on  
30 employee headcount or such other criteria as may be established by  
31 the director.

32 NEW SECTION. **Sec. 11.** RCW 43.330.730 (Finding—2015 c 296) is  
33 decodified.

34 **Sec. 12.** RCW 43.330.732 and 2015 c 296 s 2 are each amended to  
35 read as follows:

1 The definitions in this section apply throughout this subchapter  
2 unless the context clearly requires otherwise.

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

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

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

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

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

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

26 (~~(7)~~) (6) "Private sector financial services firms" or  
27 "financial services firms" mean persons or entities licensed or  
28 holding a certificate of authority and in good standing by either the  
29 department of financial institutions or the office of the insurance  
30 commissioner and meeting all federal laws and regulations to offer  
31 retirement plans.

32 (~~(8)~~) (7) "Qualified employee" means those workers who are  
33 defined by the federal internal revenue service to be eligible to  
34 participate in a specific qualified plan.

35 (~~(9)~~) (8) "Target date or other similar fund" means a hybrid  
36 mutual fund that automatically resets the asset mix of stocks, bonds,  
37 and cash equivalents in its portfolio according to a selected time  
38 frame that is appropriate for a particular investor. A target date is  
39 structured to address a projected retirement date.

1       (~~(10)~~) (9) "Washington small business retirement marketplace"  
2 or "marketplace" means the retirement savings program created to  
3 connect eligible employers and their employees with approved plans to  
4 increase retirement savings.

5       **Sec. 13.** RCW 43.330.735 and 2017 c 69 s 1 are each amended to  
6 read as follows:

7       (1) The Washington small business retirement marketplace is  
8 created.

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

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

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

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

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

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

36       (ii) That the plan meets the requirements of this section  
37 excluding subsection (9) of this section which is subject to federal  
38 laws and regulations.

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

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

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

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

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

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

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

35 (12) Participation in the Washington small business retirement  
36 marketplace is voluntary for both eligible employers and qualified  
37 employees.

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

1       **Sec. 14.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and  
2 2018 c 127 s 6 are each reenacted and amended to read as follows:

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

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

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

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

22       (b) The following accounts and funds must receive their  
23 proportionate share of earnings based upon each account's or fund's  
24 average daily balance for the period: The 24/7 sobriety account, the  
25 Washington promise scholarship account, the Gina Grant Bull memorial  
26 legislative page scholarship account, the Washington advanced college  
27 tuition payment program account, the Washington college savings  
28 program account, the accessible communities account, the Washington  
29 achieving a better life experience program account, the community and  
30 technical college innovation account, the agricultural local fund,  
31 the American Indian scholarship endowment fund, the foster care  
32 scholarship endowment fund, the foster care endowed scholarship trust  
33 fund, the contract harvesting revolving account, the Washington state  
34 combined fund drive account, the commemorative works account, the  
35 county enhanced 911 excise tax account, the toll collection account,  
36 the developmental disabilities endowment trust fund, the energy  
37 account, the fair fund, the family and medical leave insurance  
38 account, the fish and wildlife federal lands revolving account, the  
39 natural resources federal lands revolving account, the food animal  
40 veterinarian conditional scholarship account, the forest health

1 revolving account, the fruit and vegetable inspection account, the  
2 future teachers conditional scholarship account, the game farm  
3 alternative account, the GET ready for math and science scholarship  
4 account, the Washington global health technologies and product  
5 development account, the grain inspection revolving fund, the  
6 Washington history day account, the industrial insurance rainy day  
7 fund, the juvenile accountability incentive account, the law  
8 enforcement officers' and firefighters' plan 2 expense fund, the  
9 local tourism promotion account, the low-income home rehabilitation  
10 revolving loan program account, the multiagency permitting team  
11 account, the northeast Washington wolf-livestock management account,  
12 the pilotage account, the produce railcar pool account, the regional  
13 transportation investment district account, the rural rehabilitation  
14 account, the Washington sexual assault kit account, the stadium and  
15 exhibition center account, the youth athletic facility account, the  
16 self-insurance revolving fund, the children's trust fund, the  
17 Washington horse racing commission Washington bred owners' bonus fund  
18 and breeder awards account, the Washington horse racing commission  
19 class C purse fund account, the individual development account  
20 program account, the Washington horse racing commission operating  
21 account, the life sciences discovery fund, the Washington state  
22 heritage center account, the reduced cigarette ignition propensity  
23 account, the center for childhood deafness and hearing loss account,  
24 the school for the blind account, the Millersylvania park trust fund,  
25 the public employees' and retirees' insurance reserve fund, the  
26 school employees' benefits board insurance reserve fund, (~~(the)~~)  
27 the public employees' and retirees' insurance account, (~~(the)~~) the  
28 school employees' insurance account, the secure choice retirement  
29 savings administrative fund, and the radiation perpetual maintenance  
30 fund.

31 (c) The following accounts and funds must receive eighty percent  
32 of their proportionate share of earnings based upon each account's or  
33 fund's average daily balance for the period: The advanced right-of-  
34 way revolving fund, the advanced environmental mitigation revolving  
35 account, the federal narcotics asset forfeitures account, the high  
36 occupancy vehicle account, the local rail service assistance account,  
37 and the miscellaneous transportation programs account.

38 (d) Any state agency that has independent authority over accounts  
39 or funds not statutorily required to be held in the custody of the  
40 state treasurer that deposits funds into a fund or account in the

1 custody of the state treasurer pursuant to an agreement with the  
2 office of the state treasurer shall receive its proportionate share  
3 of earnings based upon each account's or fund's average daily balance  
4 for the period.

5 (5) In conformance with Article II, section 37 of the state  
6 Constitution, no trust accounts or funds shall be allocated earnings  
7 without the specific affirmative directive of this section.

8 **Sec. 15.** RCW 30B.04.040 and 2014 c 37 s 306 are each amended to  
9 read as follows:

10 Notwithstanding any other provision of this title, a person is  
11 exempt from the requirement of a certificate of authority or approval  
12 under this title, or from regulation by the director pursuant to this  
13 title, if the person is:

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

16 (2) Engaging in business in this state (a) as a national banking  
17 association or (b) as a federal mutual savings bank, federal stock  
18 savings bank, or federal savings and loan association under authority  
19 of the office of the comptroller of the currency;

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

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

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

31 (6) Acting as an escrow agent pursuant to the escrow agent  
32 registration act, chapter 18.44 RCW, or in one's capacity as an  
33 authorized title agent under Title 48 RCW;

34 (7) Acting as trustee under a deed of trust delivered only as  
35 security for the payment of money or for the performance of another  
36 act;

37 (8) Receiving and distributing rents and proceeds of sale as a  
38 licensed real estate broker on behalf of a principal in a manner  
39 authorized by the Washington department of licensing;



1 (9) Engaging in a securities transaction or providing an  
2 investment advisory service in the capacity of a licensed and  
3 registered broker-dealer, investment advisor, or registered  
4 representative thereof, provided the activity is regulated by the  
5 department or the United States securities and exchange commission;

6 (10) Engaging in the sale and administration of an insurance  
7 product by an insurance company or agent licensed by the office of  
8 the insurance commissioner to the extent that the activity is  
9 regulated by the office of the insurance commissioner;

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

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

18 (13) Acting as a private trust or private trust company to the  
19 extent exempt from regulation of the department as set forth in  
20 chapter 30B.64 RCW; ((~~or~~))

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

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

25 NEW SECTION. **Sec. 16.** Sections 2 through 10 of this act are  
26 each added to chapter 43.330 RCW.

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