

HOUSE BILL REPORT

ESSB 6069

As Reported by House Committee On:
Consumer Protection & Business

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

Brief Description: Improving private Washington workforce retirement security standards by establishing Washington saves, an automatic enrollment individual retirement savings account program, and updating the Washington retirement marketplace statute.

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

Brief History:

Committee Activity:

Consumer Protection & Business: 2/20/24, 2/21/24 [DPA].

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

- Establishes Washington Saves, a state-facilitated automatic enrollment individual retirement savings account program.
- Establishes a governing board, chaired by the State Treasurer to establish, design, implement, manage, and oversee Washington Saves.
- Permits an investment manager to invest the program funds and establishes an administrative account and trust account.
- Establishes regulations and procedures for confidentiality, complaints, appeals, violations, and civil penalties.
- Makes changes to the Washington Small Business Retirement Marketplace.

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

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; Donaghy, Hackney, Ryu, Sandlin and Volz.

Minority Report: Without recommendation. Signed by 5 members: Representatives McClintock, Assistant Ranking Minority Member; Chapman, Connors, Corry and Santos.

Staff: Megan Mulvihill (786-7304).

Background:

Employee Retirement Income Security Act of 1974.

The federal Employee Retirement Income Security Act of 1974 (ERISA) sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. Governmental plans operated by a government for its own employees are generally exempt from ERISA rules. For a private employer, however, in order to qualify for the significant tax benefits available for both employers and employees, the employer must maintain adequate recordkeeping, fairness, and funding in their retirement plans as specified by ERISA. The income tax related portions of ERISA are regulated by the federal Internal Revenue Service, and other portions by the United States Department of Labor.

Washington State Small Business Retirement Marketplace.

The Small Business Retirement Marketplace (Marketplace) was created by the Legislature in 2015. The Marketplace is operated by the Department of Commerce. Statute requires the Marketplace to provide a range of investment options to meet the needs of a diverse population, and it permits employers who are self-employed, sole proprietors, or who have fewer than 100 employees to participate. Options include a simple Individual Retirement Account (IRA) plan for employer contributions to participating enrollee accounts, and payroll deduction IRAs and workplace-based IRAs open to all workers in which the employer does not contribute to the employee's account. The state is also directed to offer "myRA," which was designed to be similar to a Roth IRA, but sponsored by the government. The US Treasury closed the myRA plan in 2018. Employers are not required to participate in the Marketplace.

Wage Payment Act.

A person owed wages may file a wage complaint with the Department of Labor and Industries (L&I) under the Wage Payment Act, and L&I is required to investigate the complaint. L&I must issue either a citation and notice of assessment or a determination of compliance. When L&I issues a citation and notice of assessment, it may order the employer to pay the employee wages, plus interest, and, if the violation was willful, may order the employer to pay a civil penalty. However, L&I may not order the payment of

wages and interest that were owed more than three years before the filing date.

Summary of Amended Bill:

Washington Saves.

Washington Saves, a state-facilitated automatic enrollment IRA program (program) is established. All private employers with a physical presence in the state, in business for at least two years, with employees with a combined minimum of 10,400 hours, and who do not offer a qualified retirement plan to their employees who have had continuous employment of one year or more, must participate. Washington Saves allows employees of a covered employer to contribute to an IRA through automatic payroll deduction, unless the employee opts out.

Governing Board Structure. The governing board must design and administer the program for the exclusive benefit of individual participants and beneficiaries with the care and skill of a knowledgeable, prudent individual. The governing board has nine members:

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

The State Treasurer serves as the chair. Governor-appointed members serve three-year terms and may serve two terms over their lifetime. Each governing board member has one vote and four members constitutes a quorum. The Office of the State Treasurer (Office) provides staff and administrative support for the governing board. The governing board must meet at least four times a year, and meetings may be conducted remotely. The governing board may appoint work groups, including members who are not governing board members, to support program design and administration. State agencies must provide reasonable program assistance as needed.

Governing Board Duties. The governing board must establish, design, develop, implement, maintain, and oversee the program. The governing board has the sole responsibility for: (1) contracting with and managing an investment manager; and (2) adopting an investment policy and ensuring investment options offered are consistent with program objectives. The program must be designed and operated in accordance with ERISA and to: minimize costs; minimize risk that employees will exceed applicable annual contribution limits; facilitate and encourage employee program participation and savings; maximize simplicity, including ease of administration and use; maximize account portability; and maximize financial security in retirement.

The program must be launched by January 1, 2027, but implementation may be phased in. The governing board may create or enter into a consortium, alliance, joint venture, partnership, compact, or contract with another state or states. The governing board must collect administrative fees to defray the program administration costs. However, if the governing board enters into a joint program agreement with another state, the administrative fee may not exceed the rate charged to employees of another state in the same program.

The governing board may consult with the Washington State Investment Board and the Department of Financial Institutions regarding the program design and implementation. The governing board must consult with the Office, L&I, the Office of Minority and Women's Business Enterprises, and the Office of the Secretary of State to create a strategy to educate and inform employers about their program duties.

The governing board must:

- set a default contribution rate, not less than 3 percent or more than 7 percent of wages;
- set a default escalation rate that may not exceed 1 percent per year or cause the maximum contribution rate to exceed 10 percent of wages;
- determine the type of IRAs available under the program;
- invest contributions in the default investment option unless the participant elects to invest in a different approved investment option;
- ensure individual accounts are portable and that former participants are still permitted to contribute to their accounts;
- ensure a participant's ability to withdraw, roll over, or transfer account balances is subject to and liable for, all fees, penalties, and taxes as required under law; and
- ensure a participant's ability to receive distributions is subject to applicable law.

Members of the governing board and the Office are not insurers to the fund or assets, nor are they liable to the state, to the fund, or to any other person as a result of their activities as members, except for willful dishonesty or intentional violations.

An individual participant's contributions and earnings may be combined for investment and custodial purposes only. Separate records and accounting are required for individual accounts. Participants must be provided with annual status reports on their accounts and have access to their accounts online. Any money placed in an individual account may not be counted as assets for the purposes of state or local means-tested program eligibility.

Employer Duties. Covered employers must facilitate their employees' participation in the program by fulfilling the required administrative duties. These duties include:

- registering and providing their employees' information to the program;
- offering their employees the choice to participate in the program or opt out;
- timely remittance of participant contributions;
- providing program information to employees, including specific disclosures; and
- providing information, forms, and instructions to employees with procedures for

making contributions, investment selections, transfers, rollovers, withdrawals, and other distributions from the employee's IRA.

An employer's role is purely ministerial, and employers are prohibited from contributing funds to an employee's IRA. Employers are not fiduciaries nor are they liable for the program.

Investment Manager Duties. After consulting with the governing board, the investment manager may invest program funds and must provide a set of self-directed investment options for participants to select from. The investment manager must invest and manage program assets in accordance with the investment policy set by the governing board. The investment manager must routinely consult and communicate with the governing board on the investment policy, account performance, and program needs. Investment and operating costs must be paid by participants and recovered under procedures agreed to by the governing board and investment manager.

Reporting Requirements. The governing board must submit an annual report to the Legislature providing information about the program, including participation, account performance, board decisions, and any program recommendations.

Department of Labor and Industries' Responsibilities. L&I is responsible for educating employers on their administrative duties under the program; investigating noncompliance, wage payment violations, and complaints; issuing citations and collecting penalties for willful violations; and facilitating an appeals process for complaints.

Complaint Procedures. L&I must investigate complaints received alleging administrative violations. If a complaint is filed before January 1, 2030, L&I must offer technical assistance to bring the employer into compliance and may not assess a civil penalty. If the complaint is filed after January 1, 2030, L&I must first provide an educational letter outlining violations and provide an employer with 90 days to remedy the violation. If the employer fails to remedy the violation, L&I may issue a citation and civil penalty. The maximum penalty for a first-time, willful violation is \$100 and \$250 for a second violation. For each subsequent violation, the maximum penalty is \$500 per violation. L&I may waive or reduce a civil penalty if the Director determines that the employer has taken corrective action to resolve the violation. L&I may not investigate any alleged violation of rights that occurred more than three years before the date the complaint was filed.

Appeal Procedures for Civil Citations. A person, firm, or corporation aggrieved by a citation and notice of assessment from L&I may appeal within 30 days of the citation. The appeal notice must state the effectiveness of the citation and notice of assessment pending final review of the appeal by the Director in accordance with the Administrative Procedures Act. Upon receipt of an appeal notice, the Director must assign the hearing to an administrative law judge of the Office of Administrative Hearings to conduct a hearing and issue an initial order. The Director must issue all final orders after appeal of the initial

order. The final order is subject to judicial review in accordance with the Administrative Procedures Act. Orders not appealed within the time frame specified are final and binding.

Impermissibly Withheld Wages. L&I must investigate an employee complaint that an employer impermissibly withheld funds due to the employee, related to the employer's program obligations. A complaint is an alleged violation of a wage payment requirement. If during an investigation, L&I discovers information suggesting additional violations of impermissibly withheld amounts due to employees, L&I may investigate and take enforcement action without any additional complaint. L&I must also initiate an investigation on behalf of one or more employees or conduct a consolidated investigation. L&I may issue subpoenas to compel witness attendance and the production of documents, administer oaths, examine witnesses under oath, take depositions, and seek affidavits or other verifications. L&I may also require an employer to perform a self-audit of records under a reasonable timeline. Employer records used for the self-audit must be made available to L&I.

All paid civil penalties must be deposited in the supplemental pension fund. Collections of unpaid citations assessing civil penalties by L&I must be made in accordance with collections procedures for wage complaints.

Program Accounts. Two accounts are established for the program: (1) the Washington Saves Administrative Treasury Trust Account, which is for program administrative and operating expenditures; and (2) the Washington Saves Investment Account, which is a trust account to hold participant contributions.

Confidentiality. Any information or records concerning an individual or employee obtained by the Office or the governing board to administer the program are confidential and private. Information provided by a governmental agency is considered private and confidential and may not be released by the Office or governing board. If the governing board enters into a joint program agreement with another state, the state with the most protective individual and employer confidentiality laws governs. The Office or the governing board may disclose confidential information and records to:

- a third party acting on behalf of an individual or employer eligible to receive records with a signed release from the individual or employer; or
- any private person or organization, including the trustee, when the disclosure is necessary to permit private contracting parties to assist in the program operation, management, and implementation.

An individual must have access to all records and information concerning their account. Employers must have access to their own records relating to program compliance, audits, and assessed penalties.

All persons, governmental agencies, and organizations authorized to receive private and confidential information have an affirmative duty to prevent unauthorized disclosure and

are prohibited from disclosing confidential information unless expressly permitted. All parties who are aware of a violation must inform the Office immediately and take reasonable actions to rectify the disclosure. The misuse or unauthorized release of confidential and private records or information is subject to a civil penalty of up to \$20,000 in the first year of the program. Beginning in December of the program's second year and each year thereafter, the maximum civil penalty increases according to a set formula based on year-to-year changes in the consumer price index. Enforcement must be brought by the Attorney General, and penalties collected must be paid into the Washington Saves Administrative Treasury Trust Account.

Decisions made by the Office, L&I, the governing board, or the appeals tribunal are not private and confidential unless it was a closed hearing. Private and confidential records and information must be available to all parties to a judicial or formal administrative proceeding upon written finding by the presiding officer that the need outweighs privacy and confidentiality.

Washington Small Business Retirement Marketplace.

Employer eligibility to enroll in a plan through the Marketplace is expanded to include employers with at least one qualified employee. The Marketplace is modified to remove from the private retirement options offered to employers, a payroll deduction IRA or a workplace-based IRA open to all workers in which the employer does not contribute to the employees' accounts. In addition, references to the myRA are removed from statute.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill makes three changes: (1) permits covered employers to automatically enroll covered employees, unless the employee opts out, in a qualified retirement plan offered by a chamber of commerce or trade association in lieu of the program; (2) requires the governing board to encourage covered employers and covered employees to use financial advisors when making retirement decisions, including by providing a current list of financial advisors across the state; and (3) specifies that the governing board must design the program so that an employer who is not a covered employer has no reporting or registration obligation or requirement to take any action under the program other than to claim an exemption.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The ultimate goal of this bill is to make it as easy as possible for people to have money taken out of their paychecks and placed into a retirement account. There are 15 other states working to create similar types of retirement programs. Eight of those programs are currently operational, and like the federal Secure 2.0 Act, all the programs are opt out. The opt in option does not get people saving for retirement. The Oregon Saves program has worked out well, and Washington could mimic that program. Oregon saw 100,000 people who had never saved for retirement begin for the first time. Oregon Saves is easy and cost effective. There are over a million workers in Washington who do not have the option to have money taken out of their paychecks and deposited into a retirement account. Washington is facing a retirement savings crisis. Nearly half of all Americans have less than \$25,000 when they enter retirement. This puts strain on the state's ability to care for those individuals when they age. People are 15 times more likely to save for retirement when they have the ability to save at work, and 20 times more likely when the program is automatic. Washington could save nearly \$3.9 billion in public assistance programs over 20 years if people would save \$1,000 more a year.

Exploring retirement benefits is very expensive for small business owners, and it takes a lot of time. Retirement benefit plans are complex to administer, yet small business owners want to be able to provide retirement options for their employees. Automatic IRAs are a low cost option, and the automatic enrollment makes the reach unparalleled. Automatic IRAs are the most efficient, inclusive, and equitable pathway to expand access to retirement savings. Roth IRAs are nice because when life happens, the money in those accounts can be used to get through challenging life experiences. The state does not control or touch the money, but rather just facilitates the transfer of the money from an individual's paycheck to their personal, private IRA. Employers are not being charged, and if employers are already offering a retirement plan, they are not included. The hope is that by pooling resources, employees are not being overcharged, and there are low fees even with low account balances. The program is completely voluntary and anyone can opt out at any time. This program would help small business owners, and it is a huge opportunity for the state to help individuals prepare for their futures and cultivate a culture of savings.

(Opposed) There are still concerns with this legislation, but opportunities to improve it. One recommended change is to allow employers to offer qualified retirement plans through chambers of commerce or trade associations. Another recommendation is to encourage the use of financial advisors throughout the decision making process for both employers and employees under this program.

(Other) Several amendments have been accepted that makes this bill more tenable to small business owners. Still, are there other options, particularly under recent federal law, that might improve this bill or otherwise improve opportunities for small business owners to provide affordable retirement plans for their workers? It is recommended that language Nevada adopted be incorporated into this bill that gives an employer the option of going with the state plan or enrolling their employees into a pooled, employer plan sponsored by a chamber of commerce or trade association. This would help lessen the likelihood of

displacing the private sector, would give an additional option, and strengthen the kind of public, private nature of the partnership this legislation envisions.

Persons Testifying: (In support) Senator Mark Mullet, prime sponsor; Jill Nelson; Karim Lessard; and Cathy MacCaul, American Association of Retired Persons Washington.

(Opposed) Chris Bandoli, National Association of Insurance and Financial Advisors Washington.

(Other) Patrick Connor, National Federation of Independent Business; and Kris Tefft, American Council of Life Insurers.

Persons Signed In To Testify But Not Testifying: None.