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**SUBSTITUTE HOUSE BILL 2109**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Springer, Manweller, Pettigrew, Harris, Kilduff, S. Hunt, Bergquist, Lytton, Tharinger, and Santos)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to creating the Washington small business  
2 retirement marketplace; adding new sections to chapter 43.330 RCW;  
3 adding a new section to chapter 43.320 RCW; and creating new  
4 sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that there is a  
7 retirement savings access gap in Washington; that Americans reach the  
8 median salary four years later than they did in 1980 and therefore  
9 have four fewer years of savings opportunities; and that one in six  
10 Americans retire in poverty. Employees who are unable to effectively  
11 build their retirement savings risk living on low incomes in their  
12 elderly years and are more likely to become dependent on state  
13 services. Further, small businesses, which employ more than forty  
14 percent of private sector employees in Washington, often choose not  
15 to offer retirement plans to employees due to concerns about costs,  
16 administrative burdens, and potential liability that they believe  
17 such plans would place on their business. In response, the  
18 legislature recognizes the work of the federal government in  
19 addressing these issues by establishing the myRA program: A safe,  
20 affordable, and accessible retirement vehicle designed to remove  
21 barriers to retirement savings. In addition, the legislature

1 recognizes that many private financial services firms in Washington  
2 currently offer high quality retirement options for small businesses  
3 and their employees.

4 The Washington small business retirement marketplace is the most  
5 effective, efficient, and sustainable way to promote increased  
6 retirement savings in the state of Washington. The Washington small  
7 business retirement marketplace will remove barriers to entry into  
8 the retirement market for small businesses by educating small  
9 employers on plan availability and promoting, without mandated  
10 participation, qualified, low-cost, low-burden retirement savings  
11 vehicles and myRA. The marketplace furthers greater retirement plan  
12 access for the residents of Washington while ensuring that  
13 individuals participating in these retirement plans will have all the  
14 protections offered by the employee retirement income security act.  
15 Further, the Washington small business retirement marketplace will  
16 not pose any significant financial burden upon taxpayers. The  
17 Washington small business retirement marketplace will be the best way  
18 for Washington to close the retirement savings access gap, protect  
19 the fiscal stability of the state and its citizens well into the  
20 future, and further cement its place as a national leader in  
21 retirement and investor promotion and protection.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply  
23 throughout this subchapter unless the context clearly requires  
24 otherwise.

25 (1) "Balanced fund" means a mutual fund that has an investment  
26 mandate to balance its portfolio holdings. The fund generally  
27 includes a mix of stocks and bonds in varying proportions according  
28 to the fund's investment outlook.

29 (2) "Eligible employer" means a person engaged in a business, an  
30 industry, a profession, a trade, or any other entity that is  
31 registered with the Washington state department of revenue, and  
32 satisfies the requirements to participate in the Washington small  
33 business retirement marketplace.

34 (3) "Enrollee" means any employee who is enrolled in an  
35 individual retirement account offered by an eligible employer through  
36 the Washington small business retirement marketplace.

37 (4) "myRA" means the myRA retirement program administered by the  
38 United States department of treasury that is available to all  
39 employers and employees with no fees or no minimum contribution

1 requirements. A myRA is a Roth IRA option and investments in these  
2 accounts are backed by the United States department of treasury.

3 (5) "Participating employer" means any eligible employer with  
4 employees enrolled in individual retirement accounts offered through  
5 the Washington small business retirement marketplace.

6 (6) "Qualified default investment alternative" means types of  
7 investments identified by the federal internal revenue service for  
8 employees who do not make an investment choice or are automatically  
9 enrolled in a retirement plan.

10 (7) "Qualified employee" means those workers who are defined by  
11 the federal internal revenue service to be eligible to participate in  
12 a specific retirement plan.

13 (8) "Qualifying plans" means retirement plan options offered by  
14 private sector financial services firms that meet the requirements of  
15 this subchapter to participate in the marketplace, and myRA.

16 (9) "Target date or similar fund" means a hybrid mutual fund that  
17 automatically resets the asset mix of stocks, bonds, and cash  
18 equivalents in its portfolio according to a selected time frame that  
19 is appropriate for a particular investor. A target date is structured  
20 to address a projected retirement date.

21 (10) "Washington small business retirement marketplace" or  
22 "marketplace" means the retirement savings program created to connect  
23 eligible employers and their employees with qualifying plans to  
24 increase retirement savings.

25 NEW SECTION. **Sec. 3.** (1)(a) The Washington small business  
26 retirement marketplace is created. The director shall contract with a  
27 private sector entity to establish a program that connects eligible  
28 employers with qualifying plans. The program must: (i) Establish a  
29 protocol for reviewing and approving the qualifications of private  
30 sector financial services firms that seek to participate in the  
31 marketplace; (ii) design and operate an internet web site that  
32 includes information about how eligible employers can participate in  
33 the marketplace; (iii) develop marketing materials about the  
34 marketplace that can be distributed electronically, posted on agency  
35 web sites that interact with eligible employers, or inserted into  
36 mail from the department of revenue, department of labor and  
37 industries, employment security department, the office of minority  
38 and women's business enterprises, department of licensing, and  
39 secretary of state's division of corporations; (iv) identify and

1 promote existing federal and state tax credits and benefits for  
2 employers and employees that are related to encouraging retirement  
3 savings or participating in retirement plans; and (v) promote the  
4 benefits of retirement savings and other information that promotes  
5 financial literacy. The director may consult with the Washington  
6 state department of retirement systems, the Washington state  
7 investment board, and the department of financial institutions in  
8 designing and managing the marketplace.

9 (b) In addition to any appropriated funds and program fees, the  
10 department may use private funding sources, including private  
11 foundation grants, to pay for marketplace expenses. On behalf of the  
12 marketplace, the department shall seek federal and private grants and  
13 is authorized to accept any funds awarded to the department for use  
14 in the marketplace.

15 (2)(a) Only self-employed individuals, sole proprietors, and  
16 employers with fewer than one hundred qualified employees at the time  
17 of enrollment, are eligible to participate in the marketplace. Prior  
18 to connecting any eligible employer with a qualifying plan in the  
19 marketplace, the director shall design a plan for the operation of  
20 the marketplace. The marketplace must approve at least three types of  
21 plans for eligible employer participation: (i) A SIMPLE IRA-type  
22 target date or other similar fund, with asset allocations and  
23 maturities designed to coincide with the expected date of retirement;  
24 (ii) a SIMPLE IRA-type balanced fund; and (iii) myRA.

25 (b) The marketplace may offer a minimum of two product options  
26 for the target date or other similar fund and a minimum of two  
27 product options for the balanced fund. The options must include: (i)  
28 A SIMPLE IRA-type program or other internal revenue service approved  
29 employer plan that provides for employer contributions to  
30 participating enrollee accounts; and (ii) a payroll deduction  
31 individual retirement account type program or workplace-based  
32 individual retirement accounts open to all workers in which the  
33 employer does not contribute to the employees' accounts.

34 (c) The products must meet federal law or regulation for the  
35 plans. A range of investment options must be provided to meet the  
36 needs of investors with various levels of risk tolerance and various  
37 ages. The director shall select the product options offered on the  
38 marketplace and may add or remove product options to best meet the  
39 needs of enrollees.

1 (d) The director shall approve a plan for the structure and  
2 operation of the marketplace based on recommendations of the entity  
3 retained pursuant to subsection (1) of this section.

4 (e) The plans and accounts must include the option for enrollees  
5 to roll pretax contributions into a different individual retirement  
6 account or another eligible retirement plan after ceasing  
7 participation in a plan approved by the Washington small business  
8 retirement marketplace.

9 NEW SECTION. **Sec. 4.** (1) Participation in the Washington small  
10 business retirement marketplace is completely voluntary.

11 (2) Qualifying plans selected by the department to offer products  
12 on the marketplace may not charge enrollees more than one hundred  
13 basis points in total annual fees, and must provide information about  
14 their plan's historical investment performance. Prior to approving a  
15 product to be offered on the marketplace, the department must receive  
16 verification from the department of financial institutions pursuant  
17 to section 9 of this act that each qualifying plan meets the  
18 requirements of this section.

19 (3) Enrollment in any plan offered in the marketplace is not an  
20 entitlement and the legislature may modify or terminate the  
21 marketplace and the products offered.

22 NEW SECTION. **Sec. 5.** The director shall adopt rules necessary  
23 to allow the marketplace to operate as authorized by this subchapter.  
24 As part of the rule development process, the director shall consult  
25 with organizations representing private sector employers, private  
26 sector employees, private and nonprofit sector retirement plan  
27 administrators and providers, and any other individuals or entities  
28 that the director determines relevant to the development of an  
29 effective and efficient method for operating the marketplace.

30 NEW SECTION. **Sec. 6.** The department shall not expose the state  
31 of Washington as an employer or through administration of the  
32 marketplace to any potential liability under the federal employee  
33 retirement income act of 1974. As such, the department is  
34 specifically prohibited from offering and operating a state-based  
35 retirement plan for businesses or individuals who are not employed in  
36 the state of Washington.

1        NEW SECTION.    **Sec. 7.** Using funds specifically appropriated for  
2 this purpose, and funds provided by private foundations or other  
3 private sector entities, the director may provide incentive payments  
4 to participating employers that enroll in the marketplace.

5        NEW SECTION.    **Sec. 8.** The director shall report biennially to  
6 the legislature on the effectiveness and efficiency of the Washington  
7 small business retirement marketplace, including the levels of  
8 enrollment and the retirement savings levels of participating  
9 enrollees.

10       NEW SECTION.    **Sec. 9.** A new section is added to chapter 43.320  
11 RCW to read as follows:

12       The department, upon request of the department of commerce, must  
13 review individual retirement account products proposed for inclusion  
14 in the Washington small business retirement marketplace to confirm  
15 that the products comply with the requirements of section 4 of this  
16 act.

17       NEW SECTION.    **Sec. 10.** If any part of this act is found to be in  
18 conflict with federal requirements that are a prescribed condition to  
19 the allocation of federal funds to the state, the conflicting part of  
20 this act is inoperative solely to the extent of the conflict and with  
21 respect to the agencies directly affected, and this finding does not  
22 affect the operation of the remainder of this act in its application  
23 to the agencies concerned. Rules adopted under this act must meet  
24 federal requirements that are a necessary condition to the receipt of  
25 federal funds by the state.

26       NEW SECTION.    **Sec. 11.** Sections 1 through 8 of this act are each  
27 added to chapter 43.330 RCW and codified with the subchapter heading  
28 of "Washington small business retirement marketplace."

29       NEW SECTION.    **Sec. 12.** If specific funding for the purposes of  
30 this act, referencing this act by bill or chapter number, is not  
31 provided by June 30, 2015, in the omnibus appropriations act, this  
32 act is null and void.

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