

**FIFTH DAY**

**MORNING SESSION**

Senate Chamber, Olympia  
Friday, January 17, 2020

The Senate was called to order at 10:02 a.m. by the President of the Senate, Lt. Governor Habib presiding. The Secretary called the roll and announced to the President that all Senators were present.

The Sergeant at Arms Color Guard consisting of Pages Mr. Kaleb Johnson and Miss Madison Sotomayor, presented the Colors. Page Miss Chloe Barney led the Senate in the Pledge of Allegiance. The prayer was offered by Reverend Evan Clendenis of St. John's Episcopal Church, Olympia.

**MOTION**

On motion of Senator Liias, the reading of the Journal of the previous day was dispensed with and it was approved.

**MOTION**

On motion of Senator Liias, the Senate advanced to the first order of business.

**REPORTS OF STANDING COMMITTEES**

**MOTION**

On motion of Senator Liias, all measures listed on the Standing Committee report were referred to the committees as designated.

**SUBCOMMITTEE ON BEHAVIORAL HEALTH  
REFERRALS**

Pursuant to Senate Rule 45(13) and without objection, notice was received from the Committee on Health & Long Term Care that the following measures had been re-referred to the Subcommittee on Behavioral Health:

Senate Bill No. 6258;  
Senate Bill No. 6259;  
Senate Bill No. 6274;  
and Senate Bill No. 6311.

**MOTION**

On motion of Senator Liias, the Senate advanced to the fourth order of business.

**MESSAGES FROM THE HOUSE**

January 16, 2020

MR. PRESIDENT:

The House has passed:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1023,  
SECOND ENGROSSED HOUSE BILL NO. 1056,  
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1264,  
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.  
1272,  
SECOND ENGROSSED SUBSTITUTE HOUSE BILL NO.  
1565,  
SUBSTITUTE HOUSE BILL NO. 1826,

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2099,  
and the same are herewith transmitted.

BERNARD DEAN, Chief Clerk

January 16, 2020

MR. PRESIDENT:

The House has adopted:

SENATE CONCURRENT RESOLUTION NO. 8411,  
and the same are herewith transmitted.

MELISSA PALMER, Deputy Chief Clerk

**MOTION**

On motion of Senator Liias, the Senate advanced to the fifth order of business.

**INTRODUCTION AND FIRST READING**

**MOTION**

On motion of Senator Liias, all measures listed on the Introduction and First Reading report were referred to the committees as designated with the exception of Senate Bill No. 6479 which was designated to the Committee on Early Learning & K-12 Education and referred to the Committee on Ways & Means.

**MOTION**

At 10:09 a.m., on motion of Senator Liias, the Senate was declared to be at ease subject to the call of the President.

Senator Billig announced a meeting of the Democratic Caucus.

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The Senate was called to order at 10:47 a.m. by President Habib.

**PERSONAL PRIVILEGE**

Senator Wagoner: "Thank you Mr. President. We all know that the state had a lot of snow in the past week and it has affected different communities in different ways. In my district on State Route 2, up in the mountains, up around towns like Skykomish and Grotto and Baring, they really got a sucker punch by mother nature. So, State Route 2 has feet of snow on it, it was closed and impassable for days. Scores of trees were down across roads and driveways. There was no power. People didn't have any way in or any way out. They haven't had access to clean drinking water, to medical care, to food, to fuel for their generators, to heat for their homes. I want to recognize their predicament today, which is ongoing by the way, it is not over yet. And commend the community itself for the work they did and also to give credit to where credit is due for emergency providers. I want to say it has been a traumatic experience for that community. And emotions run high. I haven't been on the ground out there in my district because I have been here with all of you and I don't know every personal experience and what they have been going through. So, I can't really speak for them. But, I do know this, a lot of brave and dedicated emergency

management providers and organizations like our Washington State Patrol, like the King County and Snohomish County Sheriff's Department, Fire Departments, county officials, city officials have worked very hard within the limits of their resources to help people. But, the real heroes, the true heroes of this catastrophe were the community members themselves. And it is a sad truth, well, maybe it is not sad, but it is just true. The real first responders were the community members themselves, and neighbors helping neighbors, friends helping friends. They plowed roads, they shoveled, they pushed cars out, they took care of themselves first as you would and their families first, but they didn't stop at their own front door. They went out in the community and they organized convoys. They hiked into neighbors who were living far from the road and checked on them. shared resources, food and groceries, and presumably hope as well in frigid homes. So, I want to say again, the real heroes of this catastrophe are the residents themselves. And, as a state, we didn't get this one hundred percent right, and we can do better and I know that all of you will help me after this is all over because it is not over yet. To follow up and see where we can do better for those communities and help them in different ways so that they have fuel supplies, maybe up there in the future. And I wanted to give Senator Hobbs my thanks. When I was worrying about this and making phone calls to the community, it was nice to have somebody in our caucus who was willing to take off his senator shoes and put on his National Guard boots and do a little liaising with our adjutant general. And educate me on what was possible and how things worked. Ultimately, the national guard was not called in, but I really appreciate the fact that he was willing to help me with that matter. Thank you, Mr. President."

#### MOTION

On motion of Senator Liias, the Senate advanced to the seventh order of business.

#### THIRD READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

#### MOTION

Senator Keiser moved that Jane Rushford, Senate Gubernatorial Appointment No. 9031, be confirmed as a member of the Liquor and Cannabis Board.

Senator Keiser spoke in favor of the motion.

#### APPOINTMENT OF JANE RUSHFORD

The President declared the question before the Senate to be the confirmation of Jane Rushford, Senate Gubernatorial Appointment No. 9031, as a member of the Liquor and Cannabis Board.

The Secretary called the roll on the confirmation of Jane Rushford, Senate Gubernatorial Appointment No. 9031, as a member of the Liquor and Cannabis Board and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Billig, Braun, Brown, Carlyle, Cleveland, Conway, Darneille, Das, Ericksen, Fortunato, Frockt, Hasegawa, Hawkins, Hobbs, Holy, Honeyford, Hunt, Keiser, King, Kuderer, Liias, Lovelett, McCoy, Mullet, Muzzall, Nguyen, O'Ban, Padden, Randall, Rivers, Rolfes, Saldaña, Salomon, Schoesler, Sheldon, Short, Stanford, Takko, Van De Wege, Wagoner, Walsh, Warnick, Wellman, Wilson, C. and

Wilson, L.

Excused: Senators Dhingra, Pedersen and Zeiger

Jane Rushford, Senate Gubernatorial Appointment No. 9031, having received the constitutional majority was declared confirmed as a member of the Liquor and Cannabis Board.

#### MOTION

On motion of Senator Mullet, Senators Dhingra and Pedersen were excused.

#### MOTION

On motion of Senator Rivers, Senator Zeiger was excused.

#### THIRD READING

ENGROSSED SENATE BILL NO. 5165, by Senators Saldaña, Hasegawa, Wellman, Darneille, Keiser, Nguyen, Wilson and C.

Concerning discrimination based on citizenship or immigration status.

The bill was read on Third Reading.

Senators Saldaña, Liias, Kuderer and Hasegawa spoke in favor of passage of the bill.

Senators Padden, Ericksen, Fortunato, Walsh, Schoesler, Warnick and Wagoner spoke against passage of the bill.

Senator Salomon spoke on passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5165.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5165 and the bill passed the Senate by the following vote: Yeas, 26; Nays, 20; Absent, 0; Excused, 3.

Voting yea: Senators Billig, Carlyle, Cleveland, Conway, Darneille, Das, Frockt, Hasegawa, Hobbs, Hunt, Keiser, Kuderer, Liias, Lovelett, McCoy, Mullet, Nguyen, Randall, Rolfes, Saldaña, Salomon, Stanford, Takko, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Becker, Braun, Brown, Ericksen, Fortunato, Hawkins, Holy, Honeyford, King, Muzzall, O'Ban, Padden, Rivers, Schoesler, Sheldon, Short, Wagoner, Walsh, Warnick and Wilson, L.

Excused: Senators Dhingra, Pedersen and Zeiger

ENGROSSED SENATE BILL NO. 5165, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Mullet, the rules were suspended and Engrossed Second Substitute Senate Bill No. 5740 was returned to second reading for the purpose of amendment.

#### MOTION

Senator Mullet moved that the following striking amendment

FIFTH DAY, JANUARY 17, 2020

by Senator Mullet be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** This act may be known and cited as the secure choice retirement savings program act.

**NEW SECTION. Sec. 2.** The legislature finds: That large numbers of households in this state have no or inadequate retirement savings and many of those households do not have access to any savings plan at work; that this lack of retirement savings and coverage is more prevalent among low-income households; and that it is well-established that most workers will save for retirement if they are offered a workplace savings program using an opt-out approach. Washington state is deeply concerned about the retirement prospects of its citizens and the strain that large numbers of ill-prepared retirees may impose on taxpayer-financed elderly assistance programs for housing, food, medical care, and other necessities. Accordingly, this act will facilitate voluntary retirement savings by workers in this state by establishing an IRA savings program with automatic enrollment ("auto-IRA") and requiring employers in this state that do not offer a retirement plan to make the program available to their employees.

**NEW SECTION. Sec. 3.** The definitions in this section apply throughout sections 2 through 13 of this act unless the context clearly requires otherwise.

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

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

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

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

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

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

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

(a) Satisfies the following requirements:

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

(ii) Has not sponsored, maintained, or contributed to a retirement plan under sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of the internal revenue code, including such a plan sponsored or maintained by a professional employer organization with which the employer has a professional

2020 REGULAR SESSION

employer agreement, as such terms are defined in RCW 50.04.298, at any time during the preceding two calendar years and does not currently sponsor, maintain, or contribute to a retirement plan; and

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

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

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

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

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

(11) "Investment adviser" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) To employ a program director and such other individuals as the commissioner determines to be necessary or desirable to

administer the program and the administrative fund;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The commissioner, in consultation with the state investment board and the department of financial institutions, has discretion to establish and maintain the program by: Contracting with another state to use that state's auto-IRA program, partnering with one or more states to create a joint auto-IRA program that includes the program, or forming a consortium with one or more other states in which certain aspects of each state's program are combined for administrative convenience and efficiency, provided that in any such case, the auto-IRA program used, the joint program, or the consortium otherwise satisfies the requirements of this chapter.

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

(2) Each covered employer is required to provide covered employees with such information as the commissioner directs. No

employer acting as such is a fiduciary with respect to the trust or an IRA or has fiduciary responsibilities under sections 2 through 13 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Information regarding the program;

(b) Required disclosures to be furnished to covered employees. Such disclosures must include:

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

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

(iii) A description of the tax consequences of an IRA, which

FIFTH DAY, JANUARY 17, 2020

may consist of or include the disclosure statement required to be distributed by the trustee under the internal revenue code and the treasury regulations thereunder;

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

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

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

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

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

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

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

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

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

(13) The program must be designed and operated in a manner that will cause it not to be an employee benefit plan within the meaning of section 3(3) of the employee retirement income security act of 1974. If any provision of this act is found to be in conflict with federal law or regulations, including the employee retirement income security act of 1974, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act.

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

**NEW SECTION. Sec. 7.** (1) The secure choice retirement savings administrative fund is hereby established in the custody of the state treasurer as a nonappropriated account separate and apart from the trust. The commissioner shall use moneys in the administrative fund to pay for administrative expenses it incurs in the performance of its duties under sections 2 through 13 of this act. The administrative fund may receive any grants or other moneys designated for the administrative fund from the state, or any unit of federal or local government, or any other person. Any interest earnings that are attributable to moneys in the

2020 REGULAR SESSION

administrative fund must be deposited into the administrative fund. Only the commissioner may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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

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

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

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

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

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

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

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

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

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

(8) The assets of the trust must at all times be preserved,

invested, and expended solely for the purposes of the trust and no property rights therein shall exist in favor of the state or any covered employer. Trust assets may not be transferred or used by the state for any purposes other than the purposes of the trust or funding the expenses of operating the program, including the expenses of the commissioner. Amounts deposited with the trustee are not property of the state and may not be commingled with state funds and the state has no claim to or against, or interest in, the trust assets.

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

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

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

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

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

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

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

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

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

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

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

section.

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

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

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

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

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

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

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

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

(10) Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this section if all details identifying an individual or employer are deleted so long as the information or records cannot be foreseeably combined with other publicly available information to reveal the identity of an individual or employer.

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

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

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

(d) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person, governmental agency, or organization to

FIFTH DAY, JANUARY 17, 2020

which access is permitted by this section shall subject the person, governmental agency, or organization to a civil penalty of up to twenty thousand dollars in the first year of the program and annually adjusted by the commissioner based on changes in the United States consumer price index for all urban consumers. Other applicable sanctions under state and federal law also apply.

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

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

**NEW SECTION. Sec. 12.** (1) A covered employer who fails, without reasonable cause, as defined by the commissioner in rule, to facilitate the enrollment of eligible employees in the program, shall pay a penalty for each employee for each year or portion of a year the employer failed to facilitate the enrollment of the employee. The penalty shall start at two hundred fifty dollars for each employee for which the employer has failed to facilitate the enrollment of the employee for the first year of the program and shall be annually adjusted by the commissioner based on changes in the United States consumer price index for all urban consumers.

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

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

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

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

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

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

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

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

(c) The uses of administrative fees; and

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

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

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

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

(1) "Approved plans" means retirement plans offered by

2020 REGULAR SESSION

private sector financial services firms that meet the requirements of this chapter to participate in the marketplace.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A range of investment options must be provided to meet the needs of investors with various levels of risk tolerance and various ages. The director must approve a diverse array of private retirement plan options that are available to employers on a voluntary basis, including but not limited to life insurance plans that are designed for retirement purposes, and plans for eligible employer participation such as: (a) A SIMPLE IRA-type plan that provides for employer contributions to participating enrollee accounts; and (b) a payroll deduction individual retirement account type plan or workplace-based individual retirement

accounts open to all workers in which the employer does not contribute to the employees' account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping,

and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the secure choice retirement savings administrative fund, and the library operations account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced



FIFTH DAY, JANUARY 17, 2020

2020 REGULAR SESSION

environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

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

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

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

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

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

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

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

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

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

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

(9) Engaging in a commodities or securities transaction or providing an investment advisory service in the capacity of a registered broker-dealer, investment ~~((adviser))~~ adviser, or registered representative thereof, provided the activity is regulated by the department, the United States commodities futures trading commission, or the United States securities and exchange commission;

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

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

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

(13) Acting as a private trust or private trust company to the

extent exempt from regulation of the department as set forth in chapter 30B.64 RCW; ~~((or))~~

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

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

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

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

On page 1, line 2 of the title, after "program;" strike the remainder of the title and insert "amending RCW 43.330.732, 43.330.735, and 30B.04.040; reenacting and amending RCW 43.79A.040; adding new sections to chapter 43.330 RCW; creating new sections; decodifying RCW 43.330.730; and prescribing penalties."

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Mullet to Engrossed Second Substitute Senate Bill No. 5740.

The motion by Senator Mullet carried and the striking amendment was adopted by voice vote.

MOTION

On motion of Senator Mullet, the rules were suspended, Second Engrossed Second Substitute Senate Bill No. 5740 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Mullet spoke in favor of passage of the bill.

Senator Wilson, L. spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Engrossed Second Substitute Senate Bill No. 5740.

ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Second Substitute Senate Bill No. 5740 and the bill passed the Senate by the following vote: Yeas, 26; Nays, 20; Absent, 0; Excused, 3.

Voting yea: Senators Billig, Braun, Carlyle, Cleveland, Conway, Darneille, Das, Frockt, Hobbs, Hunt, Keiser, Kuderer, Liias, Lovelett, McCoy, Mullet, Nguyen, Randall, Rolfes, Saldaña, Salomon, Stanford, Takko, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Becker, Brown, Ericksen, Fortunato, Hasegawa, Hawkins, Holy, Honeyford, King, Muzzall, O'Ban, Padden, Rivers, Schoesler, Sheldon, Short, Wagoner, Walsh, Warnick and Wilson, L.

Excused: Senators Dhingra, Pedersen and Zeiger

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5740, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was

ordered to stand as the title of the act.

Senator Warnick announced a meeting of the Republican Caucus.

MOTION

CYRUS HABIB, President of the Senate

At 11:33 a.m., on motion of Senator Lias, the Senate adjourned until 12:00 noon Monday, January 20, 2020.

BRAD HENDRICKSON, Secretary of the Senate

Senator McCoy announced a meeting of the Democratic Caucus.

1023-S		Other Action.....	1
Messages .....	1	6259	
1056		Other Action.....	1
Messages .....	1	6274	
1264-S		Other Action.....	1
Messages .....	1	6311	
1272-S2		Other Action.....	1
Messages .....	1	6479	
1565-S		Other Action.....	1
Messages .....	1	8411	
1826-S		Messages .....	1
Messages .....	1	9031 Rushford, Jane	
2099-S		Confirmed .....	2
Messages .....	1	CHAPLAIN OF THE DAY	
5165		Clendenis, Reverend Evan, St. John's	
Third Reading .....	2	Episcopal Church, Olympia.....	1
Third Reading Final Passage .....	2	FLAG BEARERS	
5740-S2		Johnson, Mr. Kaleb.....	1
Other Action.....	9	Sotomayor, Miss Madison .....	1
Other Action.....	2	GUESTS	
Second Reading .....	3	Barney, Miss Chloe, Pledge of Allegiance ...	1
Third Reading Final Passage .....	9	WASHINGTON STATE SENATE	
6258		Personal Privilege, Senator Wagoner .....	1