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HOUSE BILL 44

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Tomás E. Salazar and Christine Chandler and Gail Armstrong and
Bill Tallman and Michael Padilla

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PRIVATE SECTOR RETIREMENT; ENACTING THE NEW MEXICO
WORK AND SAVE ACT; CREATING THE NEW MEXICO WORK AND SAVE BOARD;
PROVIDING POWERS AND DUTIES; ALLOWING FOR A RETIREMENT SAVINGS
PLAN WEB-BASED MARKETPLACE; ALLOWING FOR A VOLUNTARY SAVINGS
PROGRAM FOR PRIVATE SECTOR AND NONPROFIT EMPLOYEES AND THE
SELF-EMPLOYED; PROVIDING PROTECTION FOR COVERED EMPLOYERS;
PROVIDING FOR CONFIDENTIALITY OF PARTICIPANTS AND ACCOUNT
INFORMATION; REQUIRING ANNUAL REPORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "New Mexico Work and Save Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
New Mexico Work and Save Act:

A. "board" means the New Mexico work and save

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1 board;

2 B. "board member" means a member of the board;

3 C. "covered employee" means a person who is at
4 least eighteen years of age and who is employed by a covered
5 employer, either full time or part time, or a person who is
6 self-employed as a sole proprietor or an independent
7 contractor; provided that "covered employee" does not include
8 an employee:

9 (1) covered under the federal Railway Labor
10 Act;

11 (2) on whose behalf an employer makes
12 contributions to a multi-employer pension trust fund pursuant
13 to the federal Taft-Hartley Act; or

14 (3) of federal, state or local governments or
15 any agency, department, board, commission, institution or
16 instrumentality of those governments;

17 D. "covered employer" means a person engaged in a
18 business, industry, profession, trade, nonprofit, or other
19 enterprise with its primary place of business physically
20 located in New Mexico, but does not include a federal, state or
21 local government or any agency, department, board, commission,
22 institution or instrumentality of those governments;

23 E. "financial institution" means a bank, savings
24 and loan association, credit union, broker-dealer, asset
25 manager, insurance company, mutual fund or other financial

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1 entity;

2 F. "Internal Revenue Code" means the United States
3 Internal Revenue Code of 1986, as amended;

4 G. "New Mexico retirement plan marketplace" means a
5 web-based marketplace for retirement savings plans for private
6 sector and nonprofit employers and employees, including
7 multiple-employer plans;

8 H. "New Mexico work and save" means the retirement
9 savings program that invests payroll deductions of program
10 participants in Roth individual retirement accounts without any
11 contributions from covered employers;

12 I. "participating employer" means a covered
13 employer that provides payroll deductions for individual
14 retirement accounts through New Mexico work and save but that
15 does not contribute to those accounts;

16 J. "program participant" means a covered employee
17 who is contributing to a Roth individual retirement account
18 through New Mexico work and save or has a Roth individual
19 retirement account balance through New Mexico work and save;

20 K. "Roth individual retirement account" means a
21 voluntary payroll deduction Roth individual retirement account
22 that conforms to the requirements of Section 408A of the
23 Internal Revenue Code; and

24 L. "total fees and expenses" means all fees, costs
25 and expenses, including administrative expenses, investment

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1 expenses of New Mexico work and save, investment advice
2 expenses, accounting costs, actuarial costs, legal costs,
3 marketing expenses, education expenses, trading costs,
4 insurance annuitization costs and other miscellaneous costs.

5 SECTION 3. [NEW MATERIAL] BOARD CREATED--ORGANIZATION.--

6 A. The "New Mexico work and save board" is created
7 and is administratively attached to the office of the state
8 treasurer. The office of the state treasurer shall provide
9 administrative support for the board in carrying out its duties
10 pursuant to the New Mexico Work and Save Act.

11 B. The board consists of the following voting
12 members:

13 (1) two members appointed by the state
14 treasurer as follows:

15 (a) one member who has skill, knowledge
16 and experience in the field of retirement saving and
17 investments; and

18 (b) one member who has skill, knowledge
19 and experience in retirement investment products or retirement
20 plan designs;

21 (2) three members appointed by the governor as
22 follows:

23 (a) one member who is a representative
24 of an association representing employees;

25 (b) one member who is a representative

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1 of small businesses; and

2 (c) one member who is a representative
3 of the interests of program participants;

4 (3) two members appointed by the speaker of
5 the house of representatives as follows:

6 (a) one member who is a representative
7 of the interests of program participants; and

8 (b) one member who has skill, knowledge
9 and experience in the field of retirement saving and
10 investments; and

11 (4) two members appointed by the president pro
12 tempore of the senate as follows:

13 (a) one member who is a representative
14 of the interests of program participants; and

15 (b) one member who has skill, knowledge
16 and experience in the field of retirement saving and
17 investments.

18 C. A majority of the board constitutes a quorum.
19 Action may be taken by the board upon an affirmative vote of
20 the majority of members present at the meeting at which a
21 quorum is present. A vacancy in the membership of the board
22 does not impair the right of a quorum to exercise the powers
23 and duties of the board.

24 D. The appointing authorities shall appoint the
25 first members of the board for staggered terms so that the

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1 state treasurer appoints one member for two years and one
2 member for four years, the governor appoints two members for
3 two years and one member for four years, the speaker of the
4 house of representatives appoints one member for two years and
5 one member for four years and the president pro tempore of the
6 senate appoints one member for two years and one member for
7 four years. Thereafter, members of the board shall be
8 appointed for four-year terms.

9 E. A board member shall be eligible for
10 reappointment, provided that a board member shall not serve
11 more than three full terms, consecutive or otherwise. Members
12 shall serve until their successors have been appointed. If
13 there is a vacancy for any reason, the appointing authority
14 shall appoint a qualified person to fill the unexpired term.

15 F. The appointing authority may remove a member of
16 the board that it has appointed for neglect of a duty required
17 by law, for incompetency, for malfeasance or for unprofessional
18 conduct.

19 G. Board members shall receive no salary for their
20 service as board members but shall receive per diem and mileage
21 pursuant to the Per Diem and Mileage Act.

22 SECTION 4. [NEW MATERIAL] BOARD--POWERS AND DUTIES.--

23 A. The board shall:
24 (1) elect a chair and other officers it deems
25 necessary;

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1 (2) meet as necessary to perform its duties;

2 (3) appoint an executive director, who shall
3 be the chief administrative officer of the board;

4 (4) establish and direct the implementation
5 and maintenance of the New Mexico retirement plan marketplace
6 and New Mexico work and save;

7 (5) cause New Mexico work and save to be
8 designed, established and operated:

9 (a) in accordance with best practices
10 for retirement saving vehicles;

11 (b) to encourage participation, saving,
12 sound investment practices and appropriate selection of
13 investment options, including any default investments;

14 (c) to maximize simplicity and ease of
15 administration for covered employers;

16 (d) to minimize total costs, including
17 by collective investment and economies of scale;

18 (e) to require portability of benefits;

19 and

20 (f) to avoid preemption of New Mexico
21 work and save by federal law;

22 (6) ensure that no assets of New Mexico work
23 and save are encumbered, expended or otherwise used for a
24 purpose other than those specified in the New Mexico Work and
25 Save Act;

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1 (7) develop and implement an education and
2 outreach plan to gain input and disseminate information
3 regarding the New Mexico retirement plan marketplace, New
4 Mexico work and save and retirement savings in general,
5 including timely information to covered employers regarding New
6 Mexico work and save;

7 (8) develop and implement an investment policy
8 and designate appropriate default investments for New Mexico
9 work and save that include a mix of asset classes, including
10 target date funds and index funds, that minimize program
11 participant fees and total expenses;

12 (9) establish procedures for the timely and
13 fair resolution of any disputes related to accounts or program
14 operation;

15 (10) provide a blanket surety bond for all
16 employees and board members in an amount as determined by the
17 board and conditioned on the faithful performance of the duties
18 of each employee during the employee's employment and each
19 board member during the board member's term of office; and

20 (11) perform other activities as are needed to
21 further the purposes of the New Mexico Work and Save Act.

22 B. The board may:

23 (1) promulgate rules as necessary and
24 appropriate to carry out the provisions of the New Mexico Work
25 and Save Act consistent with the Internal Revenue Code and

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1 rules adopted in accordance with that code, including ensuring
2 that New Mexico work and save satisfies all criteria for
3 favorable tax treatment and complies with all applicable
4 federal and state laws;

5 (2) enter into contracts, agreements,
6 memorandums of understanding or other arrangements with this or
7 any other state or their agencies or instrumentalities to
8 operate or manage any part of New Mexico work and save or the
9 New Mexico retirement plan marketplace, including combining
10 resources, investments or administrative functions;

11 (3) sue and be sued in its name;

12 (4) fix, revise and collect fees and other
13 charges in connection with the New Mexico retirement plan
14 marketplace or New Mexico work and save;

15 (5) contract with private and public financial
16 institutions, depositories, consultants, actuaries, attorneys,
17 auditors, investment advisers, investment administrators,
18 investment management firms, other investment firms, third
19 party administrators and other professionals as may be
20 required;

21 (6) make and execute contracts, agreements or
22 instruments necessary or convenient in the exercise of the
23 powers and functions granted the board by the New Mexico Work
24 and Save Act; provided that the board may delegate that power
25 to the executive director and may limit the scope of that

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1 delegation;

2 (7) invest and reinvest its funds in
3 accordance with applicable state law; and

4 (8) collaborate with and evaluate the role of
5 financial advisors or other financial professionals and
6 financial institutions, including those assisting and providing
7 guidance for program participants.

8 SECTION 5. [NEW MATERIAL] CONFIDENTIALITY OF PARTICIPANT
9 AND ACCOUNT INFORMATION--APPLICATION OF OTHER LAWS.--

10 A. Information obtained by the board that is
11 proprietary or information about covered employees or
12 participants in the New Mexico retirement plan marketplace is
13 confidential and not subject to inspection pursuant to the
14 Inspection of Public Records Act.

15 B. Individual account information of New Mexico
16 work and save program participants, including names, addresses,
17 telephone numbers, email addresses, personal identification
18 information, investments, contributions and earnings, is
19 confidential and shall be maintained as confidential:

20 (1) except to the extent necessary to
21 administer New Mexico work and save in a manner consistent with
22 the New Mexico Work and Save Act, the tax laws of this state
23 and the Internal Revenue Code; or

24 (2) unless the person who provides the
25 information or is the subject of the information expressly

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1 agrees in writing to the disclosure of the information.

2 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--POWERS AND
3 DUTIES.--

4 A. The executive director of New Mexico work and
5 save may:

6 (1) hire, fire and recommend to the board
7 compensation for staff, as needed; and

8 (2) contract for legal, fiscal, investment and
9 other expert advisors and service providers, none of whom shall
10 be board members and all of whom shall serve at the pleasure of
11 the board.

12 B. The executive director shall:

13 (1) oversee requests for proposals at the
14 board's direction;

15 (2) develop and disseminate educational
16 information and tools designed to improve financial literacy
17 and educate program participants, covered employers, covered
18 employees and other state residents about the benefits of
19 saving for retirement and help them decide the level of
20 participation and savings strategies that may be appropriate
21 for them;

22 (3) if necessary, determine the eligibility of
23 an employer or employee to participate in New Mexico work and
24 save; and

25 (4) perform other duties as assigned by the

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1 board.

2 SECTION 7. [NEW MATERIAL] BOARD AND BOARD EMPLOYEE
3 REQUIREMENTS AND PROHIBITIONS--CONFLICTS OF INTEREST.--

4 A. Board members and employees of the board shall
5 comply with the Gift Act, the Governmental Conduct Act and the
6 Open Meetings Act.

7 B. Board members and employees of the board shall
8 not:

9 (1) directly or indirectly have any interest
10 in the investment of New Mexico work and save or in gains or
11 profits accruing from that investment, other than as a program
12 participant;

13 (2) borrow New Mexico work and save-related
14 funds or deposits or use those funds or deposits for personal
15 gain or as an agent or partner of others; or

16 (3) become an endorser, surety or obligor on
17 investments made by New Mexico work and save.

18 C. If a board member or employee of the board has
19 an interest, either direct or indirect, in a contract to which
20 New Mexico work and save is or is to be a party, that interest
21 shall be disclosed to the board in writing and shall be set
22 forth in the minutes of the board. The board member or
23 employee having that interest shall not participate in an
24 action by the board with respect to that contract.

25 D. Board members and employees of the board shall

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1 act as fiduciaries with respect to the New Mexico retirement
2 plan marketplace and New Mexico work and save, acting solely in
3 the interest of the program participants and for the exclusive
4 purpose of providing benefits to program participants and
5 administering the program with the care, skill, prudence and
6 diligence under the circumstances then prevailing that a
7 prudent person acting in a like capacity and familiar with
8 those matters would use in the conduct of an enterprise of a
9 like character and with like aims.

10 SECTION 8. [NEW MATERIAL] NEW MEXICO RETIREMENT PLAN
11 MARKETPLACE.--

12 A. In developing and implementing the New Mexico
13 retirement plan marketplace, the board may work in concert with
14 other states offering an online marketplace similar to the New
15 Mexico retirement plan marketplace website.

16 B. The board shall:

17 (1) design the New Mexico retirement plan
18 marketplace as a website to connect employers and individuals
19 with retirement savings plans, ensuring that the design does
20 not favor a particular kind of service provider or business
21 model;

22 (2) establish requirements for financial
23 service firms that participate in the marketplace and for plans
24 offered on the marketplace;

25 (3) develop marketing materials; and

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1 (4) promote the benefits of retirement savings
2 and financial literacy.

3 C. The board shall provide public notice of the
4 process for inclusion on the New Mexico retirement plan
5 marketplace website before the website becomes publicly
6 available. The marketplace shall be available to the public
7 before the board opens New Mexico work and save for enrollment,
8 and the marketplace website address shall be included on any
9 internet website posting or other materials regarding New
10 Mexico work and save.

11 D. The board shall allow all financial service
12 firms that meet the requirements established by the board to
13 participate in the New Mexico retirement plan marketplace. In
14 addition, the board shall not exclude, by policy or otherwise,
15 a retirement plan or option within a plan that meets the
16 requirements of the board and is otherwise allowed under
17 federal or state law, including plan design options that are
18 selected by the employer.

19 E. Participation in plans offered on the New Mexico
20 retirement plan marketplace is voluntary for covered employers
21 and employees; provided that an employer that offers a
22 retirement plan through the New Mexico retirement plan
23 marketplace may use automatic enrollment and automatic
24 escalation of contributions but shall allow an employee opt-out
25 option.

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1 F. The New Mexico retirement plan marketplace may
2 offer an array of private retirement plan options, including a:
3 (1) simple individual retirement-type plan;
4 (2) payroll deduction individual
5 retirement-type plan;
6 (3) multiple-employer plan, if allowed under
7 federal law; and
8 (4) plan described in Section 401(a) or 403(b)
9 of the Internal Revenue Code.

10 G. The New Mexico retirement plan marketplace shall
11 offer a financial literacy module for employers and employees.

12 H. The New Mexico retirement plan marketplace shall
13 allow, but shall not require, the availability within approved
14 plans of distribution options that provide income in
15 retirement, including systematic withdrawal programs,
16 guaranteed lifetime withdrawal benefits and annuities.

17 I. The board shall establish administrative fees
18 for financial service firms that participate in the New Mexico
19 retirement plan marketplace. The fees shall be sufficient to
20 cover the actual cost of maintaining the New Mexico retirement
21 plan marketplace.

22 SECTION 9. [NEW MATERIAL] NEW MEXICO WORK AND SAVE--
23 CREATED--IMPLEMENTATION.--

24 A. The New Mexico work and save program developed
25 by the board under the New Mexico Work and Save Act shall:

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1 (1) provide that a covered employer may
2 voluntarily choose to participate in New Mexico work and save;

3 (2) provide that a participating employer may
4 automatically enroll its employees but shall allow its
5 employees to opt out;

6 (3) allow covered employees in New Mexico to
7 voluntarily contribute to a Roth individual retirement account
8 through automatic payroll deductions, if allowed pursuant to
9 federal law;

10 (4) provide that the default investment option
11 for program participants shall be a Roth individual retirement
12 account with a target date fund investment and a default
13 contribution rate established by the board by rule; provided
14 that the board may establish a principal protection fund for
15 initial savings up to an amount established by the board; and
16 provided that a program participant may choose to stop
17 participating altogether, choose a different investment from
18 among the options available or choose to contribute at a higher
19 or lower contribution rate, subject to the Roth individual
20 retirement account contribution dollar limits applicable under
21 the Internal Revenue Code;

22 (5) offer default escalation of contribution
23 rates that can be increased or decreased by program
24 participants within the limits allowed by the Internal Revenue
25 Code;

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1 (6) provide for direct deposit of
2 contributions into one or more investments approved by New
3 Mexico work and save;

4 (7) be professionally managed;

5 (8) not allow employer contributions by
6 covered employers;

7 (9) provide a report on the status of each
8 program participant's account to each program participant at
9 least annually;

10 (10) when practicable, use existing employer
11 and public infrastructure to facilitate contributions,
12 recordkeeping and outreach and use pooled or collective
13 investment arrangements;

14 (11) provide that each program participant
15 owns the contributions to and earnings on amounts contributed
16 to the participant's account under New Mexico work and save and
17 that the state, the board and covered employers have no
18 proprietary interest in those contributions or earnings;

19 (12) not impose any duties on employers
20 pursuant to the federal Employee Retirement Income Security Act
21 of 1974; and

22 (13) keep total fees and expenses below one
23 percent of the funds invested in New Mexico work and save.

24 B. The board shall ensure that New Mexico work and
25 save is financially self-sustaining no later than five years

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1 after the date that it is fully implemented.

2 C. If a covered employer knowingly or intentionally
3 fails to transmit a payroll deduction contribution to New
4 Mexico work and save on the earliest date the amount withheld
5 from the covered employee's compensation can reasonably be
6 segregated from the covered employer's assets, but not later
7 than the fifteenth day of the month following the month in
8 which the covered employee's contribution amounts are withheld
9 from the covered employee's paycheck, the failure to remit
10 those contributions on a timely basis shall be subject to the
11 same sanctions as employer misappropriation of employee wage
12 withholdings.

13 SECTION 10. [NEW MATERIAL] POLICIES AND PROCEDURES FOR
14 NEW MEXICO WORK AND SAVE.--The board shall promulgate rules to
15 implement New Mexico work and save that:

16 A. establish the processes by which a covered
17 employer may choose to voluntarily enroll in New Mexico work
18 and save and become a participating employer;

19 B. establish the processes for program participants
20 to enroll in and contribute to payroll deduction individual
21 retirement accounts, including elections by covered employees,
22 withholding by participating employers of program participants'
23 payroll deduction contributions from wages and remittance for
24 deposit to the program participants' individual retirement
25 accounts and voluntary enrollment and contributions by

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1 self-employed persons;

2 C. establish the processes for withdrawals,
3 rollovers and direct transfers from individual retirement
4 accounts in the interest of facilitating portability and
5 maximization of benefits;

6 D. establish processes governing the distribution
7 of funds from New Mexico work and save; and

8 E. require education of and outreach to covered
9 employers, covered employees and the public regarding New
10 Mexico work and save. The rules shall specify the content,
11 frequency, timing and means of required disclosures from New
12 Mexico work and save to covered employees, covered employers,
13 program participants and participating employers and other
14 interested parties. These disclosures shall include:

15 (1) the benefits associated with tax-favored
16 retirement saving;

17 (2) the potential advantages and disadvantages
18 associated with contributing to Roth individual retirement
19 accounts through New Mexico work and save;

20 (3) the eligibility rules for Roth individual
21 retirement accounts;

22 (4) that the program participant is solely
23 responsible for determining whether and, if so, how much the
24 program participant is eligible to contribute on a tax-favored
25 basis to a Roth individual retirement account;

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1 (5) the penalty for excess contributions to
2 Roth individual retirement accounts and the method of
3 correcting excess contributions;

4 (6) instructions for enrolling, making
5 elections to contribute or to decline to contribute and making
6 elections regarding contribution rates, types of individual
7 retirement accounts and investments;

8 (7) instructions for implementing and for
9 changing the elections;

10 (8) the potential availability of a program
11 participant's tax credit, including the eligibility conditions
12 for the credit and instructions on how to claim it;

13 (9) statements that New Mexico work and save,
14 the board, board members or board employees, a covered employer
15 or the state do not offer tax, investment or other financial
16 advice, and that the program participant should contact
17 appropriate professional advisors, and that only the program
18 participant is liable for decisions the program participant
19 makes in relation to New Mexico work and save;

20 (10) statements that payroll deduction
21 individual retirement accounts are not intended to be
22 employer-sponsored retirement plans and that New Mexico work
23 and save is not an employer-sponsored retirement plan;

24 (11) the potential implications of account
25 balances in New Mexico work and save for the application of

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1 asset limits under certain public assistance programs;

2 (12) that the program participant is solely
3 responsible for investment performance, including market gains
4 and losses, and that individual retirement accounts and rates
5 of return are not guaranteed by New Mexico work and save, the
6 board, individual board members, board employees, covered
7 employers or the state or any of its officers or employees;

8 (13) additional information and tools designed
9 to promote financial literacy and capability, which may take
10 the form of links to or explanations of how to obtain such
11 information; and

12 (14) how to obtain additional information
13 about New Mexico work and save.

14 SECTION 11. [NEW MATERIAL] PROTECTION FOR COVERED
15 EMPLOYERS.--

16 A. New Mexico work and save is not an
17 employer-sponsored plan. A covered employer does not bear
18 responsibility for:

19 (1) the decision to participate or not to
20 participate in New Mexico work and save by a covered employee;

21 (2) a specific election under New Mexico work
22 and save made by a program participant;

23 (3) investment decisions made by a program
24 participant or the board;

25 (4) the administration, investment, investment

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1 returns or investment performance of New Mexico work and save,
2 including interest rate or other rate of return on a
3 contribution or Roth individual retirement account balance;

4 (5) the design or administration of New Mexico
5 work and save or the benefits paid to program participants;

6 (6) a program participant's awareness of or
7 compliance with the conditions and other provisions of the tax
8 laws that determine which persons are eligible to make tax-
9 favored contributions to individual retirement accounts, in
10 what amount and in what time frame and manner; or

11 (7) loss, failure to realize gain or other
12 adverse consequences, including adverse tax consequences or
13 loss of favorable tax treatment, public assistance or other
14 benefits incurred by a program participant as a result of
15 participating in New Mexico work and save.

16 B. No covered employer shall be or shall be
17 considered to be a fiduciary under New Mexico work and save.

18 SECTION 12. [NEW MATERIAL] ANNUAL REPORT.--The board
19 shall prepare an annual report on the operation of New Mexico
20 work and save to be provided to the governor, the state
21 treasurer and appropriate legislative interim committees and
22 made available to all program participants, participating
23 employers and the general public.

24 SECTION 13. TEMPORARY PROVISION--DATES OF
25 IMPLEMENTATION--CONDITIONS ON IMPLEMENTATION.--

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A. The New Mexico retirement plan marketplace shall be implemented no later than July 1, 2021.

B. New Mexico work and save shall be implemented so that covered employees may begin contributing to New Mexico work and save no later than January 1, 2022.