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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. SHORT TITLE.--This act may be cited as the "New Mexico Work and Save Act".

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

- A. "board" means the New Mexico work and save board;
- B. "board member" means a member of the board;
- C. "covered employee" means a person who is at least eighteen years of age and who is employed by a covered employer, either full time or part time, or a person who is self-employed as a sole proprietor or an independent contractor; provided that "covered employee" does not include an employee:

1 (1) covered under the federal Railway Labor  
2 Act;

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

6 (3) of federal, state or local governments  
7 or any agency, department, board, commission, institution or  
8 instrumentality of those governments;

9 D. "covered employer" means a person engaged in a  
10 business, industry, profession, trade, nonprofit, or other  
11 enterprise with its primary place of business physically  
12 located in New Mexico, but does not include a federal, state  
13 or local government or any agency, department, board,  
14 commission, institution or instrumentality of those  
15 governments;

16 E. "financial institution" means a duly licensed  
17 bank, savings and loan association, credit union,  
18 broker-dealer, asset manager, insurance company, mutual fund  
19 or other financial entity;

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

22 G. "New Mexico retirement plan marketplace" means  
23 a web-based marketplace for retirement savings plans for  
24 private sector and nonprofit employers and employees,  
25 including multiple-employer plans;

1           H. "New Mexico work and save" means the retirement  
2 savings program that invests payroll deductions of program  
3 participants in Roth individual retirement accounts without  
4 any contributions from covered employers;

5           I. "participating employer" means a covered  
6 employer that provides payroll deductions for individual  
7 retirement accounts through New Mexico work and save but that  
8 does not contribute to those accounts;

9           J. "program participant" means a covered employee  
10 who is contributing to a Roth individual retirement account  
11 through New Mexico work and save or has a Roth individual  
12 retirement account balance through New Mexico work and save;

13           K. "Roth individual retirement account" means a  
14 voluntary payroll deduction Roth individual retirement  
15 account that conforms to the requirements of Section 408A of  
16 the Internal Revenue Code; and

17           L. "total fees and expenses" means all fees, costs  
18 and expenses, including administrative expenses, investment  
19 expenses of New Mexico work and save, investment advice  
20 expenses, accounting costs, actuarial costs, legal costs,  
21 marketing expenses, education expenses, trading costs,  
22 insurance annuitization costs and other related miscellaneous  
23 costs.

24           **SECTION 3. BOARD CREATED--ORGANIZATION.--**

25           A. The "New Mexico work and save board" is created

1 and is administratively attached to the office of the state  
2 treasurer. The office of the state treasurer shall provide  
3 administrative support for the board in carrying out its  
4 duties pursuant to the New Mexico Work and Save Act.

5 B. The board consists of the following voting  
6 members:

7 (1) two members appointed by the state  
8 treasurer as follows:

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

12 (b) one member who has skill, knowledge  
13 and experience in retirement investment products or  
14 retirement plan designs;

15 (2) three members appointed by the governor  
16 as follows:

17 (a) one member who is a representative  
18 of an association representing employees;

19 (b) one member who is a representative  
20 of small businesses; and

21 (c) one member who is a representative  
22 of the interests of program participants;

23 (3) two members appointed by the speaker of  
24 the house of representatives as follows:

25 (a) one member who is a representative

1 of the interests of program participants; and

2 (b) one member who has skill, knowledge  
3 and experience in the field of retirement saving and  
4 investments; and

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

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

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

12 C. A majority of the board constitutes a quorum.  
13 Action may be taken by the board upon an affirmative vote of  
14 the majority of members present at the meeting at which a  
15 quorum is present. A vacancy in the membership of the board  
16 does not impair the right of a quorum to exercise the powers  
17 and duties of the board.

18 D. The appointing authorities shall appoint the  
19 first members of the board for staggered terms so that the  
20 state treasurer appoints one member for two years and one  
21 member for four years, the governor appoints two members for  
22 two years and one member for four years, the speaker of the  
23 house of representatives appoints one member for two years  
24 and one member for four years and the president pro tempore  
25 of the senate appoints one member for two years and one

1 member for four years. Thereafter, members of the board  
2 shall be appointed for four-year terms.

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

10 F. The appointing authority may remove a member of  
11 the board that it has appointed for neglect of a duty  
12 required by law, for incompetency, for malfeasance or for  
13 unprofessional conduct.

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

17 **SECTION 4. BOARD--POWERS AND DUTIES.--**

18 A. The board shall:

- 19 (1) elect a chair and other officers it  
20 deems necessary;  
21 (2) meet as necessary to perform its duties;  
22 (3) appoint an executive director, who shall  
23 be the chief administrative officer of the board;  
24 (4) establish and direct the implementation  
25 and maintenance of the New Mexico retirement plan marketplace

1 and New Mexico work and save;

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

4 (a) in accordance with best practices  
5 for retirement saving vehicles;

6 (b) to encourage participation, saving,  
7 sound investment practices and appropriate selection of  
8 investment options, including any default investments;

9 (c) to maximize simplicity and ease of  
10 administration for covered employers;

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

13 (e) to require portability of benefits;  
14 and

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

17 (6) ensure that no assets of New Mexico work  
18 and save are encumbered, expended or otherwise used for a  
19 purpose other than one specified in the New Mexico Work and  
20 Save Act;

21 (7) develop and implement an education and  
22 outreach plan to gain input and disseminate information  
23 regarding the New Mexico retirement plan marketplace, New  
24 Mexico work and save and retirement savings in general,  
25 including timely information to covered employers regarding

1 New Mexico work and save;

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

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

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

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

18 B. The board may:

19 (1) promulgate rules as necessary and  
20 appropriate to carry out the provisions of the New Mexico  
21 Work and Save Act consistent with the Internal Revenue Code  
22 and rules adopted in accordance with that code, including  
23 ensuring that New Mexico work and save satisfies all criteria  
24 for favorable tax treatment and complies with all applicable  
25 federal and state laws;



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

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

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

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

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

23                   (7) invest and reinvest its funds in  
24 accordance with applicable state and federal law; and

25                   (8) collaborate with and evaluate the role

1 of financial advisors or other financial professionals and  
2 financial institutions, including those assisting and  
3 providing guidance to program participants.

4 SECTION 5. CONFIDENTIALITY OF PARTICIPANT AND ACCOUNT  
5 INFORMATION--APPLICATION OF OTHER LAWS.--

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

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

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

21 (2) unless the person who provides the  
22 information or is the subject of the information expressly  
23 agrees in writing to the disclosure of the information.

24 SECTION 6. EXECUTIVE DIRECTOR--POWERS AND DUTIES.--

25 A. The executive director of New Mexico work and

1 save may:

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

4 (2) contract for legal, fiscal, investment  
5 and other expert advisors and service providers, none of whom  
6 shall be board members and all of whom shall serve at the  
7 pleasure of the board.

8 B. The executive director shall:

9 (1) oversee requests for proposals at the  
10 board's direction;

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

18 (3) if necessary, determine the eligibility  
19 of an employer or employee to participate in New Mexico work  
20 and save; and

21 (4) perform other duties as assigned by the  
22 board.

23 SECTION 7. BOARD AND BOARD EMPLOYEE REQUIREMENTS AND  
24 PROHIBITIONS--CONFLICTS OF INTEREST.--

25 A. Board members and employees of the board shall

1 comply with the Gift Act, the Governmental Conduct Act and  
2 the Open Meetings Act.

3 B. Board members and employees of the board shall  
4 not:

5 (1) directly or indirectly have any interest  
6 in the investment of New Mexico work and save or in gains or  
7 profits accruing from that investment, other than as program  
8 participants;

9 (2) borrow New Mexico work and save-related  
10 funds or deposits or use those funds or deposits for personal  
11 gain or as agents or partners of others; or

12 (3) become endorsers, sureties or obligors  
13 on investments made by New Mexico work and save.

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

21 D. Board members and employees of the board shall  
22 act as fiduciaries with respect to the New Mexico retirement  
23 plan marketplace and New Mexico work and save, acting solely  
24 in the best interests of the program participants and for the  
25 exclusive purpose of providing benefits to program

1 participants and administering the program with the care,  
2 skill, prudence and diligence under the circumstances then  
3 prevailing that a prudent person acting in a like capacity  
4 and familiar with those matters would use in the conduct of  
5 an enterprise of a like character and with like aims.

6 SECTION 8. NEW MEXICO RETIREMENT PLAN MARKETPLACE.--

7 A. In developing and implementing the New Mexico  
8 retirement plan marketplace, the board may work in concert  
9 with other states offering an online marketplace similar to  
10 the New Mexico retirement plan marketplace website.

11 B. The board shall:

12 (1) design the New Mexico retirement plan  
13 marketplace as a website to connect employers and individuals  
14 with retirement savings plans, ensuring that the design does  
15 not favor a particular kind of service provider or business  
16 model;

17 (2) establish requirements for financial  
18 service firms that participate in the marketplace and for  
19 plans offered on the marketplace;

20 (3) develop marketing materials; and

21 (4) promote the benefits of retirement  
22 savings and financial literacy.

23 C. The board shall provide public notice of the  
24 process for inclusion on the New Mexico retirement plan  
25 marketplace website before the website becomes publicly

1 available. The marketplace shall be available to the public  
2 before the board opens New Mexico work and save for  
3 enrollment, and the marketplace website address shall be  
4 included on any internet website posting or other materials  
5 regarding New Mexico work and save.

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

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

21 F. The New Mexico retirement plan marketplace may  
22 offer an array of private retirement plan options, including

23 a:

- 24 (1) simple individual retirement-type plan;
- 25 (2) payroll deduction individual

1 retirement-type plan;

2 (3) multiple-employer plan, if allowed under  
3 federal law; and

4 (4) plan described in Section 401(a) or  
5 403(b) of the Internal Revenue Code.

6 G. The New Mexico retirement plan marketplace  
7 shall offer a financial literacy module for employers and  
8 employees.

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

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

19 **SECTION 9. NEW MEXICO WORK AND SAVE--CREATED--**  
20 **IMPLEMENTATION.--**

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

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

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

4 (3) allow covered employees to voluntarily  
5 contribute to a Roth individual retirement account through  
6 automatic payroll deductions, if allowed pursuant to federal  
7 law;

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

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

24 (6) provide for direct deposit of  
25 contributions into one or more investments approved by New



1 Mexico work and save;

2 (7) be professionally managed;

3 (8) not allow employer contributions by  
4 covered employers;

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

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

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

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

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

23 B. The board shall ensure that New Mexico work and  
24 save is financially self-sustaining no later than five years  
25 after the date that it is fully implemented.

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

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

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

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

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

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

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

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

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

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

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

25 (5) the penalty for excess contributions to

1 Roth individual retirement accounts and the method of  
2 correcting excess contributions;

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

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

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

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

1 asset limits under certain public assistance programs;

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

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

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

15 **SECTION 11. PROTECTION FOR COVERED 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  
21 employee;

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

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

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

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

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

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

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

21 **SECTION 12. ANNUAL REPORT.**--The board shall prepare an  
22 annual report on the operation of New Mexico work and save to  
23 be provided to the governor, the state treasurer and  
24 appropriate legislative interim committees and made available  
25 to all program participants, participating employers and the

1 general public.

2 SECTION 13. TEMPORARY PROVISION--DATES OF  
3 IMPLEMENTATION--CONDITIONS ON IMPLEMENTATION.--

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

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

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