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SENATE BILL 194

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Bill Tallman and Tara L. Lujan

AN ACT

RELATING TO PRIVATE SECTOR RETIREMENT; ALIGNING PROVISIONS OF THE NEW MEXICO WORK AND SAVE ACT TO ENABLE THE FORMATION OF AN AUTO-IRA PARTNERSHIP WITH ONE OR MORE OTHER STATES; CLARIFYING CERTAIN DEFINITIONS IN THE NEW MEXICO WORK AND SAVE ACT; REQUIRING CERTAIN EMPLOYERS TO REGISTER AS PARTICIPATING EMPLOYERS AND TO AUTOMATICALLY ENROLL THEIR EMPLOYEES IN THE NEW MEXICO WORK AND SAVE IRA PROGRAM; ALLOWING EMPLOYEES TO OPT OUT OF AUTOMATIC ENROLLMENT; MAKING AN APPROPRIATION.

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

SECTION 1. Section 58-33-2 NMSA 1978 (being Laws 2020, Chapter 7, Section 2, as amended) is amended to read:

"58-33-2. 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]~~ earns taxable income
5 pursuant to the Income Tax Act and for at least one hundred
6 eighty days is employed by a covered employer, either full time
7 or part time, or a person who is self-employed as a sole
8 proprietor or an independent contractor; provided that "covered
9 employee" does not include an employee:

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

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

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

18 D. "covered employer" means a person engaged in a
19 business, industry, profession, trade, nonprofit or other
20 enterprise with its primary place of business physically
21 located in New Mexico that employed five or more employees at
22 any time during the previous calendar year, has operated for at
23 least twelve consecutive months and, in the proceeding two
24 calendar years, has not offered all of its employees a
25 qualified retirement plan pursuant to the Internal Revenue

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1 Code, including a plan qualified under Section 401(a), 401(k),
2 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal
3 Revenue Code, but does not include a federal, state or local
4 government or any agency, department, board, commission,
5 institution or instrumentality of those governments;

6 E. "default investment option" means a Roth
7 individual retirement account with a target date fund
8 investment and a default contribution rate established by the
9 board;

10 F. "financial institution" means a duly licensed
11 bank, savings and loan association, credit union, broker-
12 dealer, asset manager, insurance company, mutual fund or other
13 financial entity;

14 G. "financial service provider" means a financial
15 or investment service provider that, if approved by the board
16 as meeting the eligibility criteria, may administer and
17 maintain one or more program participant investment accounts or
18 one or more marketplace participant accounts for which the
19 provider is a fiduciary;

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

22 I. "IRA" means an individual retirement account
23 that conforms to the requirements of Section ~~[408(a)]~~ 408A of
24 the Internal Revenue Code;

25 J. "marketplace participant" means a covered

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1 employer that establishes a plan through the New Mexico
2 retirement plan marketplace or a covered employee who
3 establishes an investment account through the New Mexico
4 retirement plan marketplace;

5 K. "New Mexico retirement plan marketplace" means a
6 board-approved web-based marketplace that facilitates access to
7 retirement savings plans for private sector and nonprofit
8 employers and employees, including multiple-employer plans;

9 L. "New Mexico work and save IRA program" means the
10 retirement savings program, designed and implemented by the
11 board, that facilitates payroll deductions of program
12 participants in individual retirement accounts without any
13 contributions from covered employers;

14 M. "New Mexico work and save platform" means the
15 online digital service designed and implemented by the board to
16 facilitate interaction among covered employers, covered
17 employees, program participants, financial service providers
18 and other users via the internet;

19 N. "participating employer" means a covered
20 employer that provides payroll deductions for individual
21 retirement accounts through the New Mexico work and save IRA
22 program but that does not contribute to those accounts;

23 O. "program participant" means a covered employee
24 who is contributing to an individual retirement account through
25 the New Mexico work and save IRA program or has an individual

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1 retirement account balance through the New Mexico work and save
2 IRA program;

3 P. "Roth individual retirement account" means a
4 voluntary payroll deduction Roth individual retirement account
5 that conforms to the requirements of Section 408A of the
6 Internal Revenue Code; ~~and~~

7 Q. "total fees and expenses" means all fees, costs
8 and expenses, including administrative expenses, investment
9 expenses of the New Mexico work and save IRA program,
10 investment advice expenses, accounting costs, actuarial costs,
11 legal costs, marketing expenses, education expenses, trading
12 costs, insurance annuitization costs and other operating
13 expenses; and

14 R. "wages" means compensation, as provided in
15 Section 219(f)(1) of the Internal Revenue Code, that is
16 received by an employee during a calendar year."

17 SECTION 2. Section 58-33-9 NMSA 1978 (being Laws 2020,
18 Chapter 7, Section 9, as amended) is amended to read:

19 "58-33-9. NEW MEXICO WORK AND SAVE IRA PROGRAM--CREATED--
20 IMPLEMENTATION.--

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

24 (1) facilitate the establishment of individual
25 retirement accounts for program participants that are

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1 administered and managed by board-approved financial service
2 providers;

3 (2) provide that a covered employer [~~may~~
4 ~~voluntarily choose to participate~~] that on or after July 1,
5 2023 is not a marketplace participant or does not offer all its
6 employees a qualified plan pursuant to the Internal Revenue
7 Code, including a plan qualified under Section 401(a), 401(k),
8 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal
9 Revenue Code, shall register and become a participating
10 employer in the New Mexico work and save IRA program;

11 (3) provide that a participating employer
12 [~~may~~] shall automatically enroll its employees but shall allow
13 its employees to opt out;

14 (4) allow covered employees to voluntarily
15 contribute to an individual retirement account through
16 automatic payroll deductions, if allowed pursuant to federal
17 law;

18 (5) provide that the default investment option
19 for program participants shall be a Roth individual retirement
20 account with a target date fund investment and a default
21 contribution rate established by the board by rule; provided
22 that the board may establish a principal protection fund for
23 initial savings up to an amount established by the board; and
24 provided that a program participant may choose to stop
25 participating altogether, choose a different investment from

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1 among the options available or choose to contribute at a higher
2 or lower contribution rate, subject to the Roth individual
3 retirement account contribution dollar limits applicable under
4 the Internal Revenue Code;

5 (6) offer default escalation of contribution
6 rates that can be increased or decreased by program
7 participants within the limits allowed by the Internal Revenue
8 Code;

9 (7) provide for direct deposit of
10 contributions into one or more investments approved by the
11 board;

12 (8) be professionally managed;

13 (9) not allow employer contributions by
14 ~~[covered]~~ participating employers;

15 (10) ensure that each board-approved financial
16 service provider submits a report on the status of each program
17 participant's account to each program participant at least
18 annually and provides annual reports to the board regarding the
19 number of program participant accounts maintained by the
20 financial service provider and the overall value of those
21 accounts;

22 (11) when practicable, use existing employer
23 and public infrastructure to facilitate contributions,
24 recordkeeping and outreach and use pooled or collective
25 investment arrangements;

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1 (12) provide that each program participant
2 owns the contributions to and earnings on amounts contributed
3 to the participant's account under the New Mexico work and save
4 IRA program and that the state, the board and ~~[covered]~~
5 participating employers have no proprietary interest, whether
6 legal or equitable, in those contributions or earnings;

7 (13) not impose any duties on employers
8 pursuant to the federal Employee Retirement Income Security Act
9 of 1974; and

10 (14) ~~[keep]~~ prescribe by rule reasonable total
11 fees and expenses [below one percent of the funds invested by a
12 program participant in the New Mexico work and save IRA
13 program] allowed pursuant to the New Mexico Work and Save Act.
14 The board shall review such rules at least annually or as
15 necessary to ensure reasonable total fees and expenses are
16 maintained.

17 B. The board shall ensure that the New Mexico work
18 and save IRA program is financially self-sustaining no later
19 than five years after the date that it is fully implemented.

20 C. If a ~~[covered]~~ participating employer knowingly
21 or intentionally fails to transmit a payroll deduction
22 contribution to the New Mexico work and save IRA program on the
23 earliest date the amount withheld from the covered employee's
24 compensation can reasonably be segregated from the ~~[covered]~~
25 participating employer's assets, but not later than the

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1 fifteenth day of the month following the month in which the
2 covered employee's contribution amounts are withheld from the
3 covered employee's paycheck, the failure to remit those
4 contributions on a timely basis shall be subject to the same
5 sanctions as employer misappropriation of employee wage
6 withholdings."

7 **SECTION 3.** Section 58-33-10 NMSA 1978 (being Laws 2020,
8 Chapter 7, Section 10, as amended) is amended to read:

9 "58-33-10. POLICIES AND PROCEDURES FOR THE NEW MEXICO
10 WORK AND SAVE IRA PROGRAM.--The board shall promulgate rules to
11 implement the New Mexico work and save IRA program that:

12 A. establish the processes by which a covered
13 employer ~~[may choose to voluntarily enroll]~~ registers in the
14 New Mexico work and save IRA program ~~[and become]~~ as a
15 participating employer;

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

25 C. establish the processes for withdrawals,

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1 rollovers, conversions and direct transfers from individual
2 retirement accounts in the interest of facilitating portability
3 and maximization of benefits;

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

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

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

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

19 (3) the eligibility rules for individual
20 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 tax-favored
24 basis to an individual retirement account;

25 (5) the penalty for excess contributions to

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

3 (6) instructions for enrolling, making
4 elections to contribute or to decline to contribute and making
5 elections regarding contribution rates, types of individual
6 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 conditions
11 for the credit and instructions on how to claim it;

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

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

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

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1 application of asset limits under certain public assistance
2 programs;

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

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

14 (14) how to obtain additional information
15 about the New Mexico work and save IRA program."

16 SECTION 4. Section 58-33-11 NMSA 1978 (being Laws 2020,
17 Chapter 7, Section 11, as amended) is amended to read:

18 "58-33-11. PROTECTION FOR ~~[COVERED]~~ PARTICIPATING
19 EMPLOYERS.--

20 A. The New Mexico work and save IRA program is not
21 an employer-sponsored plan. A ~~[covered]~~ participating employer
22 does not bear responsibility for:

23 (1) the decision by a covered employee to
24 participate or not to participate in the New Mexico work and
25 save IRA program;

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1 (2) the performance of a specific savings
2 option selection made by a program participant and facilitated
3 through the New Mexico work and save IRA program;

4 (3) investment decisions made by a program
5 participant;

6 (4) the administration, investment, investment
7 returns or investment performance of an IRA savings option
8 facilitated through the New Mexico work and save IRA program,
9 including interest rate or other rate of return on a
10 contribution or individual retirement account balance;

11 (5) the design or administration of the New
12 Mexico work and save IRA program or the benefits paid to or the
13 earnings or losses of program participants;

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

19 (7) loss, failure to realize gain or other
20 adverse consequences, including adverse tax consequences or
21 loss of favorable tax treatment, public assistance or other
22 benefits incurred by a program participant as a result of
23 participating in the New Mexico work and save IRA program.

24 B. No ~~covered~~ participating employer shall be or
25 shall be considered to be a fiduciary under the New Mexico work

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1 and save IRA program."

2 SECTION 5. APPROPRIATION.--Two hundred fifty thousand
3 dollars (\$250,000) is appropriated from the general fund to the
4 office of the state treasurer for expenditure in fiscal year
5 2024 to fund two additional full-time-equivalent positions to
6 administer the provisions of the New Mexico Work and Save Act.
7 Any unexpended or unencumbered balance remaining at the end of
8 fiscal year 2024 shall revert to the general fund.

9 SECTION 6. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2023.