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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO PRIVATE SECTOR RETIREMENT; AMENDING THE NEW MEXICO
WORK AND SAVE ACT; PROVIDING FLEXIBILITY FOR THE NEW MEXICO
WORK AND SAVE BOARD TO IMPLEMENT THE PROVISIONS OF THE NEW
MEXICO WORK AND SAVE ACT; CLARIFYING DEFINITIONS; CLARIFYING
CERTAIN PROVISIONS OF THE WORK AND SAVE PROGRAMS; PROVIDING A
SCOPE OF AUTHORITY TO THE NEW MEXICO WORK AND SAVE BOARD;
PROVIDING THAT THE BOARD, BOARD MEMBERS AND THE STATE ARE NOT
GUARANTORS OF THE WORK AND SAVE PROGRAMS; CREATING THE WORK AND
SAVE FUND; PROVIDING CONDITIONS FOR IMPLEMENTATION OF THE NEW
MEXICO WORK AND SAVE ACT AND THE NEW MEXICO WORK AND SAVE IRA
PROGRAM; MAKING AN APPROPRIATION.

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

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

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1 "58-33-1. SHORT TITLE.--~~[This act]~~ Chapter 58, Article 33
2 NMSA 1978 may be cited as the "New Mexico Work and Save Act"."

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

5 "58-33-2. DEFINITIONS.--As used in the New Mexico Work
6 and Save Act:

7 A. "board" means the New Mexico work and save
8 board;

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

10 C. "covered employee" means a person who is at
11 least eighteen years of age and who is employed by a covered
12 employer, either full time or part time, or a person who is
13 self-employed as a sole proprietor or an independent
14 contractor; provided that "covered employee" does not include
15 an employee:

16 (1) covered under the federal Railway Labor
17 Act;

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

21 (3) of federal, state or local governments or
22 any agency, department, board, commission, institution or
23 instrumentality of those governments;

24 D. "covered employer" means a person engaged in a
25 business, industry, profession, trade, nonprofit or other

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1 enterprise with its primary place of business physically
2 located in New Mexico, but does not include a federal, state or
3 local government or any agency, department, board, commission,
4 institution or instrumentality of those governments;

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

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

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

19 [~~F.~~] H. "Internal Revenue Code" means the United
20 States Internal Revenue Code of 1986, as amended;

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

24 J. "marketplace participant" means a covered
25 employer that establishes a plan through the New Mexico

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

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

9 [H.] L. "New Mexico work and save IRA program"
10 means the retirement savings program, designed and implemented
11 by the board, that [~~invests~~] facilitates payroll deductions of
12 program participants in [~~Roth~~] individual retirement accounts
13 without any 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 [I.] 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 [J.] O. "program participant" means a covered
24 employee who is contributing to [~~a Roth~~] an individual
25 retirement account through the New Mexico work and save IRA

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1 program or has [~~a Roth~~] an individual retirement account
2 balance through the New Mexico work and save IRA program;

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

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

14 **SECTION 3.** Section 58-33-4 NMSA 1978 (being Laws 2020,
15 Chapter 7, Section 4) is amended to read:

16 "58-33-4. BOARD--SCOPE OF AUTHORITY--POWERS AND DUTIES.--

17 A. The board shall not directly or indirectly
18 manage or maintain the funds or accounts of a program
19 participant. The board shall contract with appropriate
20 financial service providers to manage and maintain the funds
21 and accounts of a program participant.

22 B. In carrying out its duties to achieve the goals
23 and objectives of the New Mexico Work and Save Act, the board
24 shall:

25 (1) provide for the design, establishment and

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1 operation of the New Mexico work and save IRA program pursuant
2 to the provisions of Section 58-33-9 NMSA 1978 and shall
3 provide oversight and modify the program as necessary;

4 (2) when practicable, provide for the design,
5 establishment and operation of the New Mexico retirement plan
6 marketplace pursuant to the provision of Section 58-33-8 NMSA
7 1978 and shall provide oversight and modify the marketplace as
8 necessary;

9 (3) be covered against liability pursuant to
10 the provisions of the Tort Claims Act and, in addition, shall
11 evaluate the need for, and procure as needed:

12 (a) insurance against any and all loss
13 in connection with the property, assets or activities of the
14 New Mexico retirement plan marketplace or the New Mexico work
15 and save IRA program; and

16 (b) insurance indemnifying each board
17 member from personal loss or liability, including legal fees
18 and expenses, resulting from a member's action or inaction as a
19 board member other than in cases of gross negligence as
20 determined by a final adjudication by a court of competent
21 jurisdiction;

22 ~~[(1)]~~ (4) elect a chair and other officers it
23 deems necessary;

24 ~~[(2)]~~ (5) meet as necessary to perform its
25 duties;

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1 [~~(3)~~] (6) appoint an executive director, who
2 shall be the chief administrative officer of the board; and

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

6 [~~(5)~~ cause New Mexico work and save to be
7 designed, established and operated]

8 (7) review and revise board rules and
9 processes as necessary in response to changes in applicable
10 state and federal laws to ensure the objectives of the New
11 Mexico Work and Save Act.

12 C. In the design and implementation of the New
13 Mexico work and save IRA program or the New Mexico retirement
14 plan marketplace, the board shall:

15 [~~(a)~~] (1) act in accordance with best
16 practices for retirement saving vehicles;

17 [~~(b)~~—~~to~~] (2) encourage participation, saving,
18 sound investment practices and appropriate selection of
19 investment options, including any default investments;

20 [~~(c)~~—~~to~~] (3) maximize simplicity and ease of
21 administration for covered employers;

22 [~~(d)~~—~~to~~] (4) minimize total costs, including
23 by collective investment and economies of scale;

24 [~~(e)~~—~~to~~] (5) require portability of benefits;

25 [~~and~~

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1 ~~(f) to~~ (6) avoid preemption of the New
2 Mexico work and save IRA program by federal law;

3 ~~(6)~~ (7) ensure that no assets of the New
4 Mexico retirement plan marketplace or the New Mexico work and
5 save IRA program are encumbered, expended or otherwise used for
6 a purpose other than one specified in the New Mexico Work and
7 Save Act;

8 ~~(7)~~ (8) develop and implement an education
9 and outreach plan to gain input and disseminate information
10 regarding the New Mexico retirement plan marketplace, the New
11 Mexico work and save IRA program and retirement savings in
12 general, including timely information to covered employers
13 regarding the applicable provisions of the New Mexico work and
14 save IRA program;

15 ~~(8)~~ (9) develop and implement an investment
16 policy and designate appropriate default investments for the
17 New Mexico work and save IRA program that include a mix of
18 asset classes, including target date funds and index funds,
19 that minimize program participant fees and total expenses;

20 ~~(9)~~ (10) establish procedures for the timely
21 and fair resolution of any disputes related to accounts or
22 program operation; and

23 ~~(10) provide a blanket surety bond for all~~
24 ~~employees and board members in an amount as determined by the~~
25 ~~board and conditioned on the faithful performance of the duties~~

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1 ~~of each employee during the employee's employment and each~~
2 ~~board member during the board member's term of office; and]~~

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

5 [~~B.~~] D. The board may:

6 (1) promulgate rules as necessary and
7 appropriate to carry out the provisions of the New Mexico Work
8 and Save Act consistent with the Internal Revenue Code and
9 rules adopted in accordance with that code, including ensuring
10 that the New Mexico work and save IRA program satisfies all
11 criteria for favorable tax treatment and complies with all
12 applicable federal and state laws;

13 (2) enter into contracts, agreements,
14 memorandums of understanding or other arrangements with private
15 or nonprofit entities or with this or any other state or their
16 agencies or instrumentalities to operate or manage any part of
17 the New Mexico work and save IRA program or the New Mexico
18 retirement plan marketplace, including combining resources,
19 investments or administrative functions;

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

21 (4) fix, revise and collect fees and other
22 charges in connection with the New Mexico retirement plan
23 marketplace or the New Mexico work and save IRA program;

24 (5) contract with private and public entities
25 and professionals, technology entities or professionals,

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1 financial institutions, depositories, financial service
2 providers, consultants, actuaries, attorneys, auditors,
3 investment advisers, investment administrators, investment
4 management firms, other investment firms, third party
5 administrators and other professionals as may be appropriate or
6 required;

7 (6) make and execute contracts, agreements or
8 instruments necessary or convenient in the exercise of the
9 powers and functions granted the board by the New Mexico Work
10 and Save Act; provided that the board may delegate that power
11 to the executive director and may limit the scope of that
12 delegation;

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

15 (8) collaborate with and evaluate the role of
16 financial service providers, advisors or other financial
17 professionals and financial institutions, including those
18 assisting and providing guidance to program participants."

19 SECTION 4. Section 58-33-7 NMSA 1978 (being Laws 2020,
20 Chapter 7, Section 7) is amended to read:

21 "58-33-7. BOARD AND BOARD EMPLOYEE REQUIREMENTS AND
22 PROHIBITIONS--CONFLICTS OF INTEREST.--

23 A. Board members and employees of the board shall
24 comply with the Gift Act, the Governmental Conduct Act, [~~and~~]
25 the Open Meetings Act and any other applicable state or federal

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1 laws.

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

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

8 (2) borrow New Mexico retirement plan
9 marketplace or New Mexico work and [~~save-related~~] save IRA
10 program-related funds or deposits or [~~use~~] access and use those
11 funds or deposits for personal gain or as agents or partners of
12 others; or

13 (3) become endorsers, sureties or obligors on
14 investments made [~~by~~] pursuant to the New Mexico Work and Save
15 Act.

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

24 D. Board members and employees of the board shall
25 act as fiduciaries with respect to the design, implementation

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

10 SECTION 5. Section 58-33-8 NMSA 1978 (being Laws 2020,
11 Chapter 7, Section 8) is amended to read:

12 "58-33-8. NEW MEXICO RETIREMENT PLAN MARKETPLACE.--

13 A. The board shall, when practicable, provide for
14 the design and implementation of the New Mexico retirement plan
15 marketplace website. When implemented, the New Mexico
16 retirement plan marketplace will be hosted on and accessible
17 online through the New Mexico work and save platform that
18 provides covered employers and employees with access to
19 financial service providers that have been approved by the
20 board to administer and maintain marketplace participant
21 investment accounts. In developing and implementing the New
22 Mexico retirement plan marketplace, the board may work in
23 concert with other states or private or nonprofit entities
24 offering an online marketplace similar to the New Mexico
25 retirement plan marketplace website.

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1 B. In establishing the New Mexico retirement plan
2 marketplace, the board shall:

3 (1) design the New Mexico retirement plan
4 marketplace as a website accessible online through the New
5 Mexico work and save platform to connect employers and
6 individuals with retirement savings plans, ensuring that the
7 design does not favor a particular kind of service provider or
8 business model;

9 (2) establish requirements for financial
10 service [~~firm~~] providers that participate in the marketplace
11 and for plans offered on the marketplace;

12 (3) develop marketing, outreach and
13 educational materials; and

14 (4) promote the benefits of retirement savings
15 and financial literacy.

16 C. The board shall provide public notice of the
17 process for inclusion on the New Mexico retirement plan
18 marketplace website before the website becomes publicly
19 available. The marketplace [~~shall~~] may be available to the
20 public before the board opens the New Mexico work and save IRA
21 program for enrollment, and the marketplace website address
22 shall be included on any internet website posting or other
23 materials regarding the New Mexico work and save IRA program.

24 [~~D.~~] The board shall allow all financial service
25 [~~firm~~] providers that meet the requirements established by the

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1 board to participate in the New Mexico retirement plan
2 marketplace. In addition, the board shall not exclude, by
3 policy or otherwise, a retirement plan or option within a plan
4 that meets the requirements of the board and is otherwise
5 allowed under federal or state law, including plan design
6 options that are selected by the employer.

7 ~~[E-]~~ D. Participation in plans offered on the New
8 Mexico retirement plan marketplace is voluntary for covered
9 employers and employees; provided that an employer that offers
10 a retirement plan through the New Mexico retirement plan
11 marketplace may use automatic enrollment and automatic
12 escalation of contributions but shall allow an employee opt-out
13 option.

14 ~~[F-]~~ E. The New Mexico retirement plan marketplace
15 may offer an array of private retirement plan options,
16 including a:

- 17 (1) simple individual retirement-type plan;
- 18 (2) payroll deduction individual retirement-
19 type plan;
- 20 (3) multiple-employer plan, if allowed under
21 federal law; and
- 22 (4) plan described in Section 401(a) or 403(b)
23 of the Internal Revenue Code.

24 ~~[G-]~~ F. The New Mexico retirement plan marketplace
25 shall offer a financial literacy module for employers and

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1 employees.

2 [~~H.~~] G. The New Mexico retirement plan marketplace
3 shall allow, but shall not require, the availability within
4 approved plans of distribution options that provide income in
5 retirement, including systematic withdrawal programs,
6 guaranteed lifetime withdrawal benefits and annuities.

7 [~~F.~~] H. The board shall establish administrative
8 fees for financial service [~~firms~~] providers that participate
9 in the New Mexico retirement plan marketplace. The fees shall
10 be sufficient to cover the actual cost of maintaining the New
11 Mexico retirement plan marketplace."

12 **SECTION 6.** Section 58-33-9 NMSA 1978 (being Laws 2020,
13 Chapter 7, Section 9) is amended to read:

14 "58-33-9. NEW MEXICO WORK AND SAVE IRA PROGRAM--CREATED--
15 IMPLEMENTATION.--

16 A. The New Mexico work and save IRA program
17 developed by the board under the New Mexico Work and Save Act
18 shall:

19 (1) facilitate the establishment of individual
20 retirement accounts for program participants that are
21 administered and managed by board-approved financial service
22 providers;

23 [~~(1)~~] (2) provide that a covered employer may
24 voluntarily choose to participate in the New Mexico work and
25 save IRA program;

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

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

8 [~~(4)~~] (5) 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)~~] (6) offer default escalation of
21 contribution rates that can be increased or decreased by
22 program participants within the limits allowed by the Internal
23 Revenue Code;

24 [~~(6)~~] (7) provide for direct deposit of
25 contributions into one or more investments approved by [~~New~~]

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1 ~~Mexico work and save~~ the board;

2 [~~7~~] (8) be professionally managed;

3 [~~8~~] (9) not allow employer contributions by
4 covered employers;

5 [~~9 provide~~] (10) ensure that each board-
6 approved financial service provider submits a report on the
7 status of each program participant's account to each program
8 participant at least annually and provides annual reports to
9 the board regarding the number of program participant accounts
10 maintained by the financial service provider and the overall
11 value of those accounts;

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

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

22 [~~12~~] (13) not impose any duties on employers
23 pursuant to the federal Employee Retirement Income Security Act
24 of 1974; and

25 [~~13~~] (14) keep total fees and expenses below

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1 one percent of the funds invested by a program participant in
2 the New Mexico work and save IRA program.

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

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

17 SECTION 7. Section 58-33-10 NMSA 1978 (being Laws 2020,
18 Chapter 7, Section 10) is amended to read:

19 "58-33-10. POLICIES AND PROCEDURES FOR THE NEW MEXICO
20 WORK AND SAVE IRA PROGRAM.--The board shall promulgate rules to
21 implement the New Mexico work and save IRA program that:

22 A. establish the processes by which a covered
23 employer may choose to voluntarily enroll in the New Mexico
24 work and save IRA program and become a participating employer;

25 B. establish the processes for program participants

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1 to enroll in and contribute to New Mexico work and save IRA
2 program payroll deduction individual retirement accounts,
3 including elections by covered employees, withholding by
4 participating employers of program participants' payroll
5 deduction contributions from wages and remittance for deposit
6 to the program participants' individual retirement accounts and
7 voluntary enrollment and contributions by self-employed
8 persons;

9 C. establish the processes for withdrawals,
10 rollovers, conversions and direct transfers from individual
11 retirement accounts in the interest of facilitating portability
12 and maximization of benefits;

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

15 E. require education of and outreach to covered
16 employers, covered employees and the public regarding the New
17 Mexico work and save IRA program. The rules shall specify the
18 content, frequency, timing and means of required disclosures
19 from the New Mexico work and save IRA program to covered
20 employees, covered employers, program participants and
21 participating employers and other interested parties. These
22 disclosures shall include:

23 (1) the benefits associated with tax-favored
24 retirement saving;

25 (2) the potential advantages and disadvantages

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1 associated with contributing to [~~Roth~~] individual retirement
2 accounts through the New Mexico work and save IRA program;

3 (3) the eligibility rules for [~~Roth~~]
4 individual retirement accounts;

5 (4) that the program participant is solely
6 responsible for determining whether and, if so, how much the
7 program participant is eligible to contribute on a tax-favored
8 basis to [~~a Roth~~] an individual retirement account;

9 (5) the penalty for excess contributions to
10 [~~Roth~~] individual retirement accounts and the method of
11 correcting excess contributions;

12 (6) instructions for enrolling, making
13 elections to contribute or to decline to contribute and making
14 elections regarding contribution rates, types of individual
15 retirement accounts and investments;

16 (7) instructions for implementing and for
17 changing the elections;

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

21 (9) statements that the New Mexico work and
22 save IRA program, the board, board members or board employees,
23 a covered employer or the state [~~do~~] does not offer tax,
24 investment or other financial advice, and that the program
25 participant should contact appropriate professional advisors,

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1 and that only the program participant is liable for decisions
2 the program participant makes in relation to the New Mexico
3 work and save IRA program;

4 (10) statements that payroll deduction
5 individual retirement accounts are not intended to be employer-
6 sponsored retirement plans and that the New Mexico work and
7 save IRA program is not an employer-sponsored retirement plan;

8 (11) the potential implications of account
9 balances in the New Mexico work and save IRA program for the
10 application of asset limits under certain public assistance
11 programs;

12 (12) that the program participant is solely
13 responsible for investment performance, including market gains
14 and losses, and that individual retirement accounts and rates
15 of return are not guaranteed by the New Mexico work and save
16 IRA program, the board, individual board members, board
17 employees, covered employers or the state or any of its
18 officers or employees;

19 (13) additional information and tools designed
20 to promote financial literacy and capability, which may take
21 the form of links to or explanations of how to obtain such
22 information; and

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

25 SECTION 8. Section 58-33-11 NMSA 1978 (being Laws 2020,

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1 Chapter 7, Section 11) is amended to read:

2 "58-33-11. PROTECTION FOR COVERED EMPLOYERS.--

3 A. The New Mexico work and save IRA program is not
4 an employer-sponsored plan. A covered employer does not bear
5 responsibility for:

6 (1) the decision by a covered employee to
7 participate or not to participate in the New Mexico work and
8 save [~~by a covered employee~~] IRA program;

9 (2) the performance of a specific [~~election~~
10 ~~under~~] savings option selection made by a program participant
11 and facilitated through the New Mexico work and save [~~made by a~~
12 ~~program participant~~] IRA program;

13 (3) investment decisions made by a program
14 participant [~~or the board~~];

15 (4) the administration, investment, investment
16 returns or investment performance of an IRA savings option
17 facilitated through the New Mexico work and save IRA program,
18 including interest rate or other rate of return on a
19 contribution or [~~Roth~~] individual retirement account balance;

20 (5) the design or administration of the New
21 Mexico work and save IRA program or the benefits paid to or the
22 earnings or losses of program participants;

23 (6) a program participant's awareness of or
24 compliance with the conditions and other provisions of the tax
25 laws that determine which persons are eligible to make tax-

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1 favored contributions to individual retirement accounts, in
2 what amount and in what time frame and manner; or

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

8 B. No covered employer shall be or shall be
9 considered to be a fiduciary under the New Mexico work and save
10 IRA program."

11 SECTION 9. Section 58-33-12 NMSA 1978 (being Laws 2020,
12 Chapter 7, Section 12) is amended to read:

13 "58-33-12. ANNUAL REPORT.--The board shall prepare an
14 annual report on the operation of the New Mexico work and save
15 [~~to be provided~~] IRA program and, when implemented, the New
16 Mexico retirement plan marketplace and shall provide the report
17 to the governor, the state treasurer and appropriate
18 legislative interim committees and [~~made~~] shall make the report
19 available to all program participants, participating employers
20 and the general public."

21 SECTION 10. A new section of the New Mexico Work and Save
22 Act is enacted to read:

23 "[NEW MATERIAL] BOARD AND STATE NOT GUARANTORS.--The
24 board, each board member and the state shall not guarantee any
25 rate of return or interest rate on any contribution made by a

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1 New Mexico work and save IRA program participant or New Mexico
2 retirement plan marketplace participant."

3 SECTION 11. A new section of the New Mexico Work and Save
4 Act is enacted to read:

5 "[NEW MATERIAL] WORK AND SAVE FUND--CREATED.--There is
6 created in the state treasury the "work and save fund" to be
7 administered by the board. Money in the fund is appropriated
8 to the board for the sole purposes of carrying out the
9 provisions of the New Mexico Work and Save Act. The fund shall
10 consist of appropriations by the legislature, fees collected by
11 the board, gifts, grants and donations and revenue otherwise
12 accruing to the fund. Money in the fund shall be disbursed on
13 warrants signed by the secretary of finance and administration
14 pursuant to vouchers signed by the chair of the board or the
15 chair's authorized designee. Earnings of the fund shall be
16 credited to the fund, and any unexpended and unencumbered
17 balances in the fund at the end of a fiscal year shall not
18 revert to the general fund or any other fund."

19 SECTION 12. TEMPORARY PROVISION--NEW MEXICO WORK AND SAVE
20 ACT--IMPLEMENTATION DATES--CONDITIONS ON IMPLEMENTATION.--

21 A. The New Mexico retirement plan marketplace shall
22 be implemented when determined practicable by the New Mexico
23 work and save board and at such time that the board determines
24 it has the necessary funding for the design, implementation and
25 maintenance of the marketplace.

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underscoring material = new
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B. The New Mexico work and save IRA program shall be implemented by the New Mexico work and save board at such time that the board determines it has the necessary funding for the design, implementation and maintenance of the program.