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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO PRIVATE SECTOR RETIREMENT; CREATING THE RETIREMENT SAVINGS FACILITATION INCOME TAX CREDIT; 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 INDIVIDUAL RETIREMENT ACCOUNT PROGRAM; ALLOWING EMPLOYEES TO OPT OUT OF AUTOMATIC ENROLLMENT; 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.

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

SECTION 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] RETIREMENT SAVINGS FACILITATION INCOME TAX CREDIT.--

underscoring material = new
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1 A. For taxable years prior to January 1, 2028, a
2 taxpayer who is not a dependent of another individual and is an
3 owner of a business that meets the requirements of this section
4 may apply for, and the department may allow, a credit in an
5 amount up to three hundred dollars (\$300) against the
6 taxpayer's tax liability imposed pursuant to the Income Tax
7 Act. The tax credit provided by this section may be referred
8 to as the "retirement savings facilitation income tax credit".

9 B. A taxpayer may claim the tax credit provided by
10 this section for the taxable year in which the taxpayer is an
11 owner of a business that is actively registered as a
12 marketplace participant or a participating employer pursuant to
13 the New Mexico Work and Save Act and employs one or more
14 residents; provided that a taxpayer shall be ineligible for a
15 tax credit pursuant to this section if that taxpayer offered an
16 employer-sponsored retirement plan prior to July 1, 2022. To
17 receive the tax credit, a taxpayer shall apply to the
18 department on forms and in the manner prescribed by the
19 department. A completed application shall include a
20 certification made by the New Mexico work and save board
21 pursuant to Subsection E of this section.

22 C. That portion of credit that exceeds a taxpayer's
23 tax liability for the taxable year in which the credit is
24 claimed shall not be refunded but may be carried forward for a
25 maximum of three consecutive taxable years.

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1 D. A taxpayer may be allocated the right to claim a
2 tax credit provided by this section in proportion to the
3 taxpayer's ownership interest if the taxpayer owns an interest
4 in a business entity that is taxed for federal income tax
5 purposes as a partnership or limited liability company and that
6 business entity has met all of the requirements to be eligible
7 for the credit. The total credit claimed by all members of the
8 partnership or limited liability company shall not exceed the
9 allowable amount of credit pursuant to this section.

10 E. The New Mexico work and save board shall adopt
11 rules establishing procedures to provide certification to a
12 business that meets the requirements of this section for
13 purposes of obtaining the tax credit provided by this section.

14 F. A taxpayer allowed a tax credit pursuant to this
15 section shall report the amount of the credit to the department
16 in a manner required by the department.

17 G. The department shall compile an annual report on
18 the tax credit that shall include the number of taxpayers
19 approved by the department to receive the credit, the aggregate
20 amount of credits approved and any other information necessary
21 to evaluate the effectiveness of the credit. The department
22 shall present the report to the revenue stabilization and tax
23 policy committee and the legislative finance committee with an
24 analysis of the tax credit, including the cost of the tax
25 credit."

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

3 "58-33-2. DEFINITIONS.--As used in the New Mexico Work
4 and Save Act:

5 A. "board" means the New Mexico work and save
6 board;

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

8 C. "covered employee" means a person who is at
9 least eighteen years of age and ~~[who]~~ earns taxable income
10 pursuant to the Income Tax Act and for at least one hundred
11 eighty days is employed by a covered employer or an eligible
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 that employed five or more employees at
3 any time during the previous calendar year, has operated for at
4 least twenty-four consecutive months and, in the preceding two
5 calendar years, has not offered to all employees a qualified
6 retirement plan pursuant to the Internal Revenue Code,
7 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, but does not include a federal, state or local
10 government or any agency, department, board, commission,
11 institution or instrumentality of those governments;

12 E. "default investment option" means a Roth
13 individual retirement account with a target date fund
14 investment and a default contribution rate established by the
15 board;

16 F. "eligible employer" means a person engaged in a
17 business, industry, profession, trade, nonprofit or other
18 enterprise in New Mexico that employs four or fewer employees
19 or is self-employed and does not offer all of its employees a
20 qualified retirement plan pursuant to the Internal Revenue
21 Code, including a plan qualified under Section 401(a), 401(k),
22 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal
23 Revenue Code, but does not include a federal, state or local
24 government or any agency, department, board, commission,
25 institution or instrumentality of those governments;

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1 ~~[F.]~~ G. "financial institution" means a duly
2 licensed bank, savings and loan association, credit union,
3 broker-dealer, asset manager, insurance company, mutual fund or
4 other financial entity;

5 ~~[G.]~~ H. "financial service provider" means a
6 financial or investment service provider that, if approved by
7 the board as meeting the eligibility criteria, may administer
8 and maintain one or more program participant investment
9 accounts or one or more marketplace participant accounts for
10 which the provider is a fiduciary;

11 ~~[H.]~~ I. "Internal Revenue Code" means the United
12 States Internal Revenue Code of 1986, as amended;

13 ~~[I.]~~ J. "IRA" means an individual retirement
14 account that conforms to the requirements of Section ~~[408(a)]~~
15 408A of the Internal Revenue Code;

16 ~~[J.]~~ K. "marketplace participant" means a covered
17 employer or eligible employer that establishes a plan through
18 the New Mexico retirement plan marketplace or a covered
19 employee who establishes an investment account through the New
20 Mexico retirement plan marketplace;

21 ~~[K.]~~ L. "New Mexico retirement plan marketplace"
22 means a board-approved web-based marketplace that facilitates
23 access to retirement savings plans for private sector and
24 nonprofit employers and employees, including multiple-employer
25 plans;

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1 ~~[L.]~~ M. "New Mexico work and save IRA program"
2 means the retirement savings program, designed and implemented
3 by the board, that facilitates payroll deductions of program
4 participants in individual retirement accounts without any
5 contributions from covered employers;

6 ~~[M.]~~ N. "New Mexico work and save platform" means
7 the online digital service designed and implemented by the
8 board to facilitate interaction among covered employers,
9 eligible employers, covered employees, program participants,
10 financial service providers and other users via the internet;

11 ~~[N.]~~ O. "participating employer" means a covered
12 employer or eligible employer that provides payroll deductions
13 for individual retirement accounts through the New Mexico work
14 and save IRA program but that does not contribute to those
15 accounts;

16 ~~[O.]~~ P. "program participant" means a covered
17 employee who is contributing to an individual retirement
18 account through the New Mexico work and save IRA program or has
19 an individual retirement account balance through the New Mexico
20 work and save IRA program;

21 ~~[P.]~~ Q. "Roth individual retirement account" means
22 a voluntary payroll deduction Roth individual retirement
23 account that conforms to the requirements of Section 408A of
24 the Internal Revenue Code; ~~[and]~~

25 ~~[Q.]~~ R. "total fees and expenses" means all fees,
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1 costs and expenses, including administrative expenses,
2 investment expenses of the New Mexico work and save IRA
3 program, investment advice expenses, accounting costs, revenue
4 sharing, broker fees, actuarial costs, [~~legal costs~~] marketing
5 expenses, education expenses, trading costs, insurance
6 annuitization costs and other operating expenses; and

7 S. "wages" means "compensation", as provided in
8 Section 219(f)(1) of the Internal Revenue Code that is received
9 by an employee during a calendar year."

10 SECTION 3. Section 58-33-9 NMSA 1978 (being Laws 2020,
11 Chapter 7, Section 9, as amended) is amended to read:

12 "58-33-9. NEW MEXICO WORK AND SAVE IRA PROGRAM--CREATED--
13 IMPLEMENTATION.--

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

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

21 (2) provide that a covered employer [~~may~~
22 ~~voluntarily choose to participate~~] that is not a marketplace
23 participant shall register and become a participating employer
24 in the New Mexico work and save IRA program;

25 (3) provide that a participating employer

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1 ~~may~~ shall automatically enroll its employees but shall allow
2 its employees to opt out;

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

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

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

23 (7) provide for direct deposit of
24 contributions into one or more investments approved by the
25 board;

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1 (8) be professionally managed;

2 (9) not allow employer contributions by
3 covered employers;

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

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

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

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

24 (14) ~~keep~~ ensure that the total fees and
25 expenses ~~[below one percent of the funds invested by a program~~

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1 ~~participant in]~~ associated with the New Mexico work and save
2 IRA program do not exceed the following rates:

3 (a) during each of the initial five
4 years of operation, total fees and expenses shall not exceed
5 one percent of the total value of the program's assets; and

6 (b) during the sixth year of operation
7 and in each year thereafter, the total fees and expenses shall
8 not exceed seventy-five hundredths percent of the total value
9 of the program's assets.

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

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

25 SECTION 4. Section 58-33-10 NMSA 1978 (being Laws 2020,

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1 Chapter 7, Section 10, as amended) is amended to read:

2 "58-33-10. POLICIES AND PROCEDURES FOR THE NEW MEXICO
3 WORK AND SAVE IRA PROGRAM.--The board shall promulgate rules to
4 implement the New Mexico work and save IRA program that:

5 A. establish the processes by which [~~a covered~~] an
6 employer [~~may choose to voluntarily enroll~~] registers in the
7 New Mexico work and save IRA program [~~and become~~] as a
8 participating employer;

9 B. establish the processes for program participants
10 to enroll in and contribute to New Mexico work and save IRA
11 program payroll deduction individual retirement accounts,
12 including elections by covered employees, withholding by
13 participating employers of program participants' payroll
14 deduction contributions from wages and remittance for deposit
15 to the program participants' individual retirement accounts and
16 voluntary enrollment and contributions by self-employed
17 persons;

18 C. establish the processes for withdrawals,
19 rollovers, conversions and direct transfers from individual
20 retirement accounts in the interest of facilitating portability
21 and maximization of benefits;

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

24 E. require education of and outreach to covered
25 employers, covered employees and the public regarding the

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1 New Mexico work and save IRA program. The rules shall specify
2 the content, frequency, timing and means of required
3 disclosures from the New Mexico work and save IRA program to
4 covered employees, covered employers, program participants and
5 participating employers and other interested parties. These
6 disclosures shall include:

7 (1) the benefits associated with tax-favored
8 retirement saving;

9 (2) the potential advantages and disadvantages
10 associated with contributing to individual retirement accounts
11 through the New Mexico work and save IRA program;

12 (3) the eligibility rules for individual
13 retirement accounts;

14 (4) that the program participant is solely
15 responsible for determining whether and, if so, how much the
16 program participant is eligible to contribute on a tax-favored
17 basis to an individual retirement account;

18 (5) the penalty for excess contributions to
19 individual retirement accounts and the method of correcting
20 excess contributions;

21 (6) instructions for enrolling, making
22 elections to contribute or to decline to contribute and making
23 elections regarding contribution rates, types of individual
24 retirement accounts and investments;

25 (7) instructions for implementing and for

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1 changing the elections;

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

5 (9) statements that the New Mexico work and
6 save IRA program, the board, board members or board employees,
7 a covered employer or the state does not offer tax, investment
8 or other financial advice, and that the program participant
9 should contact appropriate professional advisors, and that only
10 the program participant is liable for decisions the program
11 participant makes in relation to the New Mexico work and save
12 IRA program;

13 (10) statements that payroll deduction
14 individual retirement accounts are not intended to be employer-
15 sponsored retirement plans and that the New Mexico work and
16 save IRA program is not an employer-sponsored retirement plan;

17 (11) the potential implications of account
18 balances in the New Mexico work and save IRA program for the
19 application of asset limits under certain public assistance
20 programs;

21 (12) that the program participant is solely
22 responsible for investment performance, including market gains
23 and losses, and that individual retirement accounts and rates
24 of return are not guaranteed by the New Mexico work and save
25 IRA program, the board, individual board members, board

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1 employees, covered employers or the state or any of its
2 officers or employees;

3 (13) additional information and tools designed
4 to promote financial literacy and capability, which may take
5 the form of links to or explanations of how to obtain such
6 information; and

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

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

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

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

16 (1) the decision by a covered employee to
17 participate or not to participate in the New Mexico work and
18 save IRA program;

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

22 (3) investment decisions made by a program
23 participant;

24 (4) the administration, investment, investment
25 returns or investment performance of an IRA savings option

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1 facilitated through the New Mexico work and save IRA program,
2 including interest rate or other rate of return on a
3 contribution or individual retirement account balance;

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

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

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

17 B. No ~~[covered]~~ participating employer shall be or
18 shall be considered to be a fiduciary under the New Mexico work
19 and save IRA program."

20 SECTION 6. APPLICABILITY.--The provisions of Section 1 of
21 this act apply to taxable years beginning on or after January
22 1, 2022.

23 SECTION 7. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2022.