

SENATE BILL 194

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

INTRODUCED BY

Bill Tallman and Tara L. Lujan

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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; STBTC→REQUIRING COOPERATION FROM

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STATE AGENCIES TO SHARE RELEVANT DATA; ←STBTC 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 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~~ earns taxable income pursuant to the Income Tax Act and for at least one hundred eighty days 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) covered under the federal Railway Labor Act;
- (2) on whose behalf an employer makes contributions to a multi-employer pension trust fund pursuant to the federal Taft-Hartley Act; or
- (3) of federal, state or local governments or any agency, department, board, commission, institution or instrumentality of those governments;

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D. "covered employer" means a person engaged in a business, industry, profession, trade, nonprofit or other enterprise with its primary place of business physically located in New Mexico that employed five or more employees at any time during the previous calendar year, has operated for at least twelve consecutive months and, in the STBTC→~~proceeding~~←STBTC STBTC→~~preceding~~←STBTC two calendar years, has not offered all of its employees a qualified retirement plan pursuant to the Internal Revenue Code, including a plan qualified under Section 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code, but does not include a federal, state or local government or any agency, department, board, commission, institution or instrumentality of those governments;

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

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

G. "financial service provider" means a financial or investment service provider that, if approved by the board as meeting the eligibility criteria, may administer and

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maintain one or more program participant investment accounts or one or more marketplace participant accounts for which the provider is a fiduciary;

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

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

J. "marketplace participant" means a covered employer that establishes a plan through the New Mexico retirement plan marketplace or a covered employee who establishes an investment account through the New Mexico retirement plan marketplace;

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

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

M. "New Mexico work and save platform" means the online digital service designed and implemented by the board to facilitate interaction among covered employers, covered

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employees, program participants, financial service providers and other users via the internet;

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

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

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

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

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

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

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

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

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

(2) provide that a covered employer [~~may voluntarily choose to participate~~] that on or after July 1, STBTC→2023←STBTC STBTC→2024←STBTC is not a marketplace participant or does not offer all its employees a qualified plan pursuant to the Internal Revenue Code, including a plan qualified under Section 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code, shall register and become a participating employer in the New Mexico work and save IRA program;

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

(4) allow covered employees to voluntarily contribute to an individual retirement account through

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automatic payroll deductions, if allowed pursuant to federal law;

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

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

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

(8) be professionally managed;

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

(10) ensure that each board-approved financial

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service provider submits a report on the status of each program participant's account to each program participant at least annually and provides annual reports to the board regarding the number of program participant accounts maintained by the financial service provider and the overall value of those accounts;

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

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

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

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

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maintained.

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

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

STBTC→D. **Notwithstanding any other provision of law, all state agencies shall cooperate as requested by the state treasurer for the advancement of the New Mexico work and save IRA program, including the sharing of relevant data, as the parties shall mutually agree is reasonably necessary.**"←STBTC

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

"58-33-10. POLICIES AND PROCEDURES FOR THE NEW MEXICO WORK AND SAVE IRA PROGRAM.--The board shall promulgate rules to

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implement the New Mexico work and save IRA program that:

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

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

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

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

E. require education of and outreach to covered employers, covered employees and the public regarding the New Mexico work and save IRA program. The rules shall specify the content, frequency, timing and means of required disclosures from the New Mexico work and save IRA program to

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covered employees, covered employers, program participants and participating employers and other interested parties. These disclosures shall include:

- (1) the benefits associated with tax-favored retirement saving;
- (2) the potential advantages and disadvantages associated with contributing to individual retirement accounts through the New Mexico work and save IRA program;
- (3) the eligibility rules for individual retirement accounts;
- (4) that the program participant is solely responsible for determining whether and, if so, how much the program participant is eligible to contribute on a tax-favored basis to an individual retirement account;
- (5) the penalty for excess contributions to individual retirement accounts and the method of correcting excess contributions;
- (6) instructions for enrolling, making elections to contribute or to decline to contribute and making elections regarding contribution rates, types of individual retirement accounts and investments;
- (7) instructions for implementing and for changing the elections;
- (8) the potential availability of a program participant's tax credit, including the eligibility conditions

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for the credit and instructions on how to claim it;

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

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

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

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

(13) additional information and tools designed

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to promote financial literacy and capability, which may take the form of links to or explanations of how to obtain such information; and

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

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

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

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

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

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

(3) investment decisions made by a program participant;

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

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

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

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

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

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

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

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