

SENATE BILL NO. 346

INTRODUCED BY T. GAUTHIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA OPTIONAL RETIREMENT FOR  
5 EMPLOYEES SAVINGS PROGRAM; PROVIDING DEFINITIONS; PROVIDING EMPLOYEE AND EMPLOYER  
6 ELIGIBILITY; PROVIDING THE DEPARTMENT OF COMMERCE WITH ADMINISTRATIVE AUTHORITY OVER  
7 THE PROGRAM; CREATING THE PROGRAM FUND; EXEMPTING EMPLOYEE INFORMATION FROM  
8 PUBLIC DISCLOSURE; CREATING AN INCOME TAX CREDIT FOR PARTICIPATING ENTITIES; PROVIDING  
9 PUBLIC EDUCATION REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be referred to as the "Montana  
15 Optional Retirement for Employees Savings Act".

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17 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12] the following definitions  
18 apply:

- 19 (1) "Department" means the department of commerce provided for in 2-15-1801.  
20 (2) "Eligible employer" means a person, firm, corporation, partnership, or bona fide association as  
21 provided in 33-22-1803 that is actively engaged in business that, with respect to a calendar year and a plan year,  
22 employed at least 2 but not more than 150 eligible employees during the preceding calendar year and employed  
23 at least 2 employees on the first day of the plan year. The term does not apply to the federal government, the  
24 state, any county, any municipal corporation, or any of the state's units or instrumentalities. In the case of an  
25 employer that was not in existence throughout the preceding calendar year, the determination of whether the  
26 employer is a small or large employer must be based on the average number of employees reasonably expected  
27 to be employed by the employer in the current calendar year. In determining the number of eligible employees,  
28 eligible employers are considered one employer if they are:  
29 (a) affiliated companies;  
30 (b) eligible to file a combined tax return for purposes of state taxation; or

1 (c) members of a bona fide association.

2 (3) "Investment product" means a fixed or variable rate annuity, savings account, certificate of deposit,  
3 money market account, bond or mutual fund, or another form of investment not prohibited by the Internal Revenue  
4 Code and authorized by the program.

5 (4) "IRA" means an individual retirement account or individual retirement annuity under the Internal  
6 Revenue Code.

7 (5) "Nonparticipating employer" means an eligible employer in the state that does not elect to participate  
8 in the program.

9 (6) "Participating employee" means an individual who:

10 (a) is 18 years of age or older who is employed in this state by an eligible employer;

11 (b) chooses to have contributions made to an account in the program; and

12 (c) has at least \$1 in an account in the program.

13 (7) "Participating employer" means an eligible employer that provides an automatic payroll deposit  
14 retirement savings arrangement provided for by [sections 1 through 12] for eligible employees.

15 (8) "Program" means the Montana optional retirement for employees savings program created in [section  
16 4].

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18 **NEW SECTION. Section 3. Purpose -- liberal construction.** (1) [Sections 1 through 12] must be  
19 liberally construed to provide an automatic payroll deduction retirement program for participating employers and  
20 participating employees.

21 (2) The program must comply with the Internal Revenue Code and other applicable federal and state  
22 law.

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24 **NEW SECTION. Section 4. Program creation -- participation -- contribution level -- rulemaking**  
25 **authority.** (1) The Montana optional retirement for employees savings program is established within the  
26 department to provide a cost-effective group retirement program for eligible employers and employees of eligible  
27 employers in the state.

28 (2) A participating employer shall establish a payroll deduction arrangement with the program to allow  
29 each employee to participate in the program.

30 (3) A participating employer shall:

- 1 (a) enroll into the program each employee that has opted into participation; and
- 2 (b) provide a payroll arrangement to deposit funds into the program on behalf of the employee.
- 3 (4) A participating employee may select a contribution level to contribute into the fund. This contribution
- 4 level may be expressed as a percentage of wages or as a dollar amount up to the maximum amount the
- 5 participating employee may deduct from the participating employee's federal income taxes for the employee's
- 6 tax year under the Internal Revenue Code. A participating employee may change the contribution level at any
- 7 time, subject to rules adopted by the department. If a participating employee fails to select a contribution level,
- 8 the participating employee shall contribute 5% of the participating employee's wages to the program as long as
- 9 those contributions do not cause the participating employee's total contributions to an individual retirement
- 10 account for the year to exceed the deductible amount for the participating employee's taxable year under the
- 11 Internal Revenue Code.
- 12 (5) A participating employer retains the option to set up any type of employer-sponsored retirement plan
- 13 at any time.
- 14 (6) An employee may terminate participation in the program at any time in the manner prescribed by the
- 15 program.

16

17 **NEW SECTION. Section 5. Fund creation -- private funding.** (1) The Montana optional retirement

18 for employees savings fund is established as a private purpose trust fund authorized under 17-2-102 and

19 17-8-101, outside of the state general fund. The board created in [section 7] is the trustee. The fund must include

20 the individual retirement accounts of participating employees, which must be accounted for as individual

21 accounts. The fund consists of money received from participating employees and participating employers

22 pursuant to automatic payroll deduction and contributions made under [section 4].

- 23 (2) The program does not create or constitute a debt, obligation, or liability of the state.
- 24 (3) Any contract entered into by the department or the board in connection with the program:
- 25 (a) does not create or constitute a debt of the state and is solely an obligation of the program; and
- 26 (b) must require the person contracting with the department to indemnify the state.
- 27 (4) The corpus, assets, and earnings under the program are not public money of the state and are solely
- 28 available to carry out the purposes of [sections 1 through 12].

29

30 **NEW SECTION. Section 6. Administration.** (1) The department shall develop standards and

1 requirements for operation of the program consistent with [sections 1 through 12] and applicable federal  
2 regulations, including:

- 3 (a) providing for an automatic payroll deduction IRA if allowed under federal law;  
4 (b) procedures for creating a payroll arrangement with participating employers for deductions and  
5 remittances;  
6 (c) procedures for a participating employee to make deposits into an account if the participating  
7 employee is employed by a nonparticipating employer;  
8 (d) procedures for portability or discontinuing participation in the program; and  
9 (e) procedures for a participating employee to increase or decrease the participating employee's  
10 contribution to an account or cease participation in the program, including providing for automatic increases in  
11 the amounts deducted for an IRA.

12 (2) The department shall, in accordance with the Montana Procurement Act, Title 18, chapter 4, contract  
13 with one or more providers that provide:

- 14 (a) options for accounts and investment products under the program;  
15 (b) a procedure through a website for an eligible employer to elect to become a participating employer;  
16 (c) a procedure through a website for an employee of an eligible employer to become a participating  
17 employee and to select an investment product;  
18 (d) for recordkeeping, reporting, and other administrative services;  
19 (e) for management of money being deposited in an investment product; and  
20 (f) for educating the general public about the program.

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22 **NEW SECTION. Section 7. Board powers.** (1) There is a board for the program. The board is  
23 administratively attached to the department to administer [sections 1 through 12]. The board consists of seven  
24 members appointed by the governor to staggered 4-year terms. The members must include:

- 25 (a) the deputy director of the department or the department director's designee;  
26 (b) the deputy commissioner of securities;  
27 (c) one licensed financial adviser;  
28 (d) one small business owner who is eligible to participate in the program;  
29 (e) one employee eligible to be enrolled in the program;  
30 (f) one senior advocate who represents interests of retirees;

1 (g) one member of the general public, who possesses knowledge, skill, and experience in accounting,  
2 risk management, or investment management.

3 (2) The board:

4 (a) shall select a program manager pursuant to [section 9];

5 (b) may submit proposed policies to the department to assist in the implementation and administration  
6 of [section 4];

7 (c) may retain professional services, if necessary, including services of accountants,  
8 auditors, consultants, and other experts; and

9 (d) may seek rulings and other guidance relating to the program from appropriate federal departments.

10 (3) The board shall select a presiding officer and a vice presiding officer from among the board's  
11 membership.

12 (4) A majority of the membership of the board constitutes a quorum. The board shall meet at least once  
13 a year, with additional meetings called by the presiding officer.

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15 **NEW SECTION. Section 8. Confidentiality.** (1) Personal information specific to a participating  
16 employee is recognized as constitutionally protected from public disclosure under Article II, section 10, of the  
17 Montana constitution. Protected information regarding a participating employee includes but is not limited to:

18 (a) identifying information;

19 (b) account balances;

20 (c) details of transactions; and

21 (d) any information for which the participating employee's right to privacy outweighs the public's right to  
22 know under Article II, sections 8 and 9, of the Montana constitution.

23 (2) The program is subject to public record requirements under Title 2, chapter 6.

24  
25 **NEW SECTION. Section 9. Education of employers and employees.** (1) The department shall  
26 develop educational information to educate eligible small businesses concerning the program.

27 (2) The financial institution or institutions selected as program manager or managers shall develop  
28 educational information to educate eligible employees concerning the program.

29  
30 **NEW SECTION. Section 10. Election to participate -- termination of participation.** (1) A participating

1 employer shall comply with all program requirements, including making payroll deductions and remittances as  
2 required by the department.

3 (2) (a) An eligible employer in this state may not be required to participate in the program.

4 (b) If an employee of a nonparticipating employer in this state elects to participate in the program, the  
5 participating employee shall make deposits in the participating employee's account in accordance with  
6 procedures established by the department. However, a nonparticipating employer may not be required to make  
7 payroll deductions and remittances.

8 (3) A participating employer is not responsible for gains or losses for funding the program or contributing  
9 to the program.

10 (4) A participating employer may elect to discontinue participation in accordance with program  
11 requirements.

12

13 **NEW SECTION. Section 11. Employee information.** (1) An eligible employer shall annually notify the  
14 eligible employer's employees of the following:

15 (a) whether the eligible employer is a participating employer;

16 (b) what steps an employee may take to become a participating employee; and

17 (c) any other information required by the department by rule.

18 (2) The department shall establish:

19 (a) information required to be included under subsection (1); and

20 (b) one or more methods an eligible employer may use to comply with the notification requirements of  
21 subsection (1).

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23 **NEW SECTION. Section 12. Statement confirming participation.** (1) (a) The department shall provide  
24 a statement to a participating employer confirming that the participating employer has elected to participate in the  
25 program in a calendar year.

26 (b) The department shall provide the department of revenue an electronic listing of those persons who  
27 receive in the previous calendar year a statement under this subsection (1).

28 (2) The department of revenue shall provide for ongoing reporting to a participating employee regarding  
29 the account of the participating employee, including:

30 (a) the frequency of the reporting; and

1 (b) what is to be itemized in the report.

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3 **NEW SECTION. Section 13. Credit for employer participation in Montana optional retirement for**  
4 **employees savings program.** (1) There is a nonrefundable credit against taxes otherwise imposed by this  
5 chapter for a participating employer that participates in the program provided in [section 4].

6 (2) The credit must be computed and administered as provided in this section.

7 (3) A tax credit under this section may not be carried forward or carried back.

8 (4) Subject to the other provisions of this section, the one-time tax credit is \$500 for the first year that  
9 the participating employer elects to participate in the program. The participating employer must receive a  
10 statement in accordance with [section 12] confirming that the participating employer elects to participate in  
11 the program.

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13 **NEW SECTION. Section 14. Codification instruction.** (1) [Sections 1 through 12] are intended to be  
14 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 12].

15 (2) [Section 13] is intended to be codified in as an integral part of Title 15, chapter 30, and the provisions  
16 of Title 15, chapter 30, apply to [section 13].

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18 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

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20 **NEW SECTION. Section 16. Applicability.** [This act] applies to tax years beginning after December  
21 31, 2017.

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