

SENATE BILL NO. 233

INTRODUCED BY T. GAUTHIER

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA OPTIONAL RETIREMENT FOR EMPLOYEES SAVINGS PROGRAM; PROVIDING DEFINITIONS; PROVIDING CRITERIA FOR EMPLOYEE AND EMPLOYER ELIGIBILITY; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH ADMINISTRATIVE AUTHORITY OVER THE PROGRAM; EXEMPTING EMPLOYEE INFORMATION FROM PUBLIC DISCLOSURE; PROVIDING PUBLIC EDUCATION REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be referred to as the "Montana Optional Retirement for Employees Savings Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 13] the following definitions apply:

- (1) "Board" means the board provided for in [section 7].
- (2) "Department" means the department of labor provided for in 2-15-1701.
- (3) "Eligible employee" means an individual who is employed by an eligible employer, who has wages or other compensation that is allocable to the state, and who is at least 18 years of age. The term does not include:
  - (a) any employee covered under the federal Railway Labor Act, 45 U.S.C. 151;
  - (b) any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension trust fund; or
  - (c) any individual who is an employee of the federal government, the state or any other state, any county or municipal corporation, or any of the state's or any other state's units or instrumentalities.
- (4) "Eligible employer" means a person, firm, corporation, partnership, or bona fide association as provided in 33-22-1803 that is actively engaged in business that, with respect to a calendar year and a plan year, employed at least 2 but not more than 150 eligible employees during the preceding calendar year and employed

1 at least 2 employees on the first day of the plan year. The term does not apply to the federal government, the  
2 state, any county, any municipal corporation, or any of the state's units or instrumentalities. In the case of an  
3 employer that was not in existence throughout the preceding calendar year, the determination of whether the  
4 employer is a small or large employer must be based on the average number of employees reasonably expected  
5 to be employed by the employer in the current calendar year. In determining the number of eligible employees,  
6 eligible employers are considered one employer if they are:

7 (a) affiliated companies;

8 (b) eligible to file a combined tax return for purposes of state taxation; or

9 (c) members of a bona fide association.

10 (5) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001,  
11 et seq.

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

15 (7) "IRA" means an individual retirement account or individual retirement annuity under the Internal  
16 Revenue Code.

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

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

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

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

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

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

25 (11) "Program" means the Montana optional retirement for employees savings program created in  
26 [section 4].

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28 **NEW SECTION. Section 3. Purpose -- liberal construction.** (1) [Sections 1 through 13] must be  
29 liberally construed to provide an automatic payroll deduction retirement program for participating employers and  
30 participating employees.

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

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4 **NEW SECTION. Section 4. Program creation -- participation -- contribution level -- rulemaking**  
5 **authority.** (1) The Montana optional retirement for employees savings program is established within the  
6 department to provide a cost-effective group retirement program for eligible employers and eligible employees  
7 in the state. The program is designed and meant to be implemented in a manner consistent with applicable  
8 federal law and consistent with the program not being preempted by ERISA.

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

11 (3) A participating employer shall:

12 (a) enroll into the program each eligible employee that has opted into participation; and

13 (b) provide a payroll arrangement to deposit funds into the program on behalf of the employee.

14 (4) A participating employee may select a contribution level to contribute into the fund program. This  
15 contribution level may be expressed as a percentage of wages or as a dollar amount up to the maximum amount  
16 the participating employee may deduct from the participating employee's federal income taxes for the employee's  
17 tax year under the Internal Revenue Code. A participating employee may change the contribution level at any  
18 time, subject to rules adopted by the department. If a participating employee fails to select a contribution level,  
19 the participating employee shall contribute 5% of the participating employee's wages to the program as long as  
20 those contributions do not cause the participating employee's total contributions to an individual retirement  
21 account for the year to exceed the deductible amount for the participating employee's tax year under the Internal  
22 Revenue Code.

23 (5) A participating employer retains the option to set up any type of employer-sponsored retirement plan  
24 at any time.

25 (6) An employee may terminate participation in the program at any time in the manner prescribed by the  
26 program.

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28 **NEW SECTION. Section 5. Private funding.** (1) The program does not create or constitute a debt,  
29 obligation, or liability of the state.

30 (2) Any contract entered into by the department or the board in connection with the program:

- 1 (a) does not create or constitute a debt of the state and is solely an obligation of the program; and  
2 (b) must require the person contracting with the department to indemnify the state.  
3 (3) The corpus, assets, and earnings under the program are not public money of the state and are solely  
4 available to carry out the purposes of [sections 1 through 13].  
5

6 **NEW SECTION. Section 6. Administration.** (1) The board shall develop standards and requirements  
7 for operation of the program consistent with [sections 1 through 13] and applicable federal regulations, including:

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

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

- 19 (a) options for accounts and investment products under the program;  
20 (b) a procedure through a website for an eligible employer to elect to become a participating employer;  
21 (c) a procedure through a website for an eligible employee of an eligible employer to become a  
22 participating employee and to select an investment product;  
23 (d) for recordkeeping, reporting, and other administrative services;  
24 (e) for management of money being deposited in an investment product; and  
25 (f) for educating the general public about the program.  
26

27 **NEW SECTION. Section 7. Board powers.** (1) There is a board for the program. The board is  
28 administratively attached to the department to administer [sections 1 through 13]. The board consists of seven  
29 members appointed by the governor to staggered 4-year terms. The members must include:

- 30 (a) the deputy director of the department or the department director's designee;

- 1 (b) the deputy commissioner of securities;
- 2 (c) one licensed financial adviser;
- 3 (d) one small business owner who is eligible to participate in the program;
- 4 (e) one employee eligible to be enrolled in the program;
- 5 (f) one senior advocate who represents interests of retirees;
- 6 (g) one member of the general public who possesses knowledge, skill, and experience in accounting,
- 7 risk management, or investment management.
- 8 (2) The board:
- 9 (a) shall select a program manager pursuant to [section 9];
- 10 (b) may submit proposed policies to the department to assist in the implementation and administration
- 11 of [section 4];
- 12 (c) may retain professional services, if necessary, including services of accountants,
- 13 auditors, consultants, and other experts; and
- 14 (d) may seek rulings and other guidance relating to the program from appropriate federal departments.
- 15 (3) The board shall select a presiding officer and a vice presiding officer from among the board's
- 16 membership.
- 17 (4) A majority of the membership of the board constitutes a quorum. The board shall meet at least once
- 18 a year, with additional meetings called by the presiding officer.

19

20 **NEW SECTION. Section 8. Confidentiality.** (1) Personal information specific to a participating

21 employee is recognized as constitutionally protected from public disclosure under Article II, section 10, of the

22 Montana constitution. Protected information regarding a participating employee includes but is not limited to:

- 23 (a) identifying information;
- 24 (b) account balances;
- 25 (c) details of transactions; and
- 26 (d) any information for which the participating employee's right to privacy outweighs the public's right to
- 27 know under Article II, sections 8 and 9, of the Montana constitution.
- 28 (2) The program is subject to public record requirements under Title 2, chapter 6.

29

30 **NEW SECTION. Section 9. Education of employers and employees.** (1) The department shall

1 develop educational information to educate eligible small businesses concerning the program.

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

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5 **NEW SECTION. Section 10. Election to participate -- termination of participation.** (1) A participating  
6 employer shall comply with all program requirements, including making payroll deductions and remittances as  
7 required by the department.

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

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

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

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

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

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

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

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

23 (2) The department shall establish:

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

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

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

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

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

5 (a) the frequency of the reporting; and

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

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8 **NEW SECTION. Section 13. Audits and annual reports.** (1) The board shall maintain an accurate  
9 account and record of all of the program's trusts and board activities, operations, receipts, and expenditures. Each  
10 year, a certified public accountant shall conduct a full audit of the account and record of the board, which must  
11 include but not be limited to direct and indirect costs attributable to the use of outside consultants, independent  
12 contractors, and any other persons who are not state employees for the administration of the program. For the  
13 purposes of the audit, the auditors shall have access to the properties and records of the program and board and  
14 may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by  
15 the program.

16 (2) By August 1 of each year, the board shall submit to the governor, the state treasurer, and the  
17 appropriate committees of the senate and house an audited financial report, prepared in accordance with  
18 generally accepted accounting principles, detailing the activities, operations, receipts, and expenditures of the  
19 program and board during the preceding calendar year. The report must also include projected activities of the  
20 program for the current calendar year.

21 (3) The board shall prepare an annual report on the operation of the program to be available to all  
22 citizens and provided to appropriate state officials.

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

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

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29 **NEW SECTION. Section 16. Applicability.** [This act] applies to tax years beginning after December  
30 31, 2019.

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