117TH CONGRESS
1ST SESSION

S. 1870

To amend the Internal Revenue Code of 1986 to provide for penalty-free withdrawals from retirement accounts for certain emergency expenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 27, 2021

Mr. LANKFORD (for himself and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for penalty-free withdrawals from retirement accounts for certain emergency expenses, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Enhancing Emergency
and Retirement Savings Act of 2021”.
SEC. 2. WITHDRAWALS FOR CERTAIN EMERGENCY EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(I) DISTRIBUTIONS FOR CERTAIN EMERGENCY EXPENSES.—

“(i) IN GENERAL.—Any emergency personal expense distribution.

“(ii) ANNUAL LIMITATION.—Not more than 1 distribution per calendar year may be treated as an emergency personal expense distribution by any individual.

“(iii) DOLLAR LIMITATION.—The amount which may be treated as an emergency personal expense distribution by any individual in any calendar year shall not exceed the lesser of $1,000 or an amount equal to the excess of—

“(I) the individual’s total non-forfeitable accrued benefit under the plan (the individual’s total interest in the plan in the case of an individual retirement plan), determined as of the date of each such distribution, over

“(II) $1,000."
“(iv) Emergency personal expense distribution.—For purposes of this subparagraph, the term ‘emergency personal expense distribution’ means any distribution from an applicable eligible retirement plan (as defined in subparagraph (H)(vi)(I)) to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. The administrator of an applicable eligible retirement plan may rely on an employee’s certification that the employee satisfies the conditions of the preceding sentence in determining whether any distribution is an emergency personal expense distribution.

“(v) Treatment of plan distributions.—If a distribution to an individual would (without regard to clause (iii)) be an emergency personal expense distribution, a plan shall not be treated as failing to meet any requirement of this title merely because the plan treats the distribution as an emergency personal expense distribution, unless the aggregate amount of such dis-
tributions from all plans maintained by the employer (and any member of any controlled group which includes the employer, determined as provided in subparagraph (H)(iv)(II)) to such individual exceeds the limitation determined under clause (iii).

“(vi) Amount distributed may be repaid.—

“(I) In general.—Any individual who receives an emergency personal expense distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an applicable eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.
“(II) LIMITATION ON CONTRIBUTIONS TO APPLICABLE ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—The aggregate amount of contributions made by an individual under subclause (I) to any applicable eligible retirement plan which is not an individual retirement plan shall not exceed the aggregate amount of emergency personal expense distributions which are made from such plan to such individual. Subclause (I) shall not apply to contributions to any applicable eligible retirement plan which is not an individual retirement plan unless the individual is eligible to make contributions (other than those described in subclause (I)) to such applicable eligible retirement plan.

“(III) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM APPLICABLE ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—If a contribution is made under subclause (I) with respect to an emergency personal
expense distribution from an applicable eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received such distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the applicable eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

“(IV) TREATMENT OF REPAYMENTS FOR DISTRIBUTIONS FROM IRAS.—If a contribution is made under subclause (I) with respect to an emergency personal expense distribution from an individual retirement plan, then, to the extent of the amount of the contribution, such distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the applicable eligible retirement plan in a direct trustee to trust-
ee transfer within 60 days of the distribution.

“(vii) LIMITATION ON SUBSEQUENT DISTRIBUTIONS.—If a distribution is treated as an emergency personal expense distribution in any calendar year with respect to a plan, no amount may be treated as such a distribution in any subsequent calendar year with respect to such plan unless—

“(I) such previous distribution is fully repaid pursuant to clause (vi) to such plan, or

“(II) the aggregate of the elective deferrals and employee contributions to the plan (the total amounts contributed to the plan in the case of an individual retirement plan) subsequent to such previous distribution is at least equal to the amount of such previous distribution which has not been so repaid.

“(viii) SPECIAL RULES.—Rules similar to the rules of subclauses (II) and (IV)
of subparagraph (H)(vi) shall apply to any emergency personal expense distribution.”.

(b) Effective Date.—The amendments made by this section shall apply to distributions made after December 31, 2021.