

1 SENATE BILL NO. 258

2 INTRODUCED BY J. BOHLINGER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING FAMILY
 5 EDUCATION SAVINGS ACCOUNTS; EXCLUDING FROM INCOME THOSE EARNINGS ON ACCOUNTS
 6 THAT ARE WITHDRAWN FOR QUALIFIED EXPENSES; IMPOSING A TAX ON CERTAIN WITHDRAWALS
 7 FROM ACCOUNTS INSTEAD OF RECAPTURING THE WITHDRAWALS AS INCOME; REQUIRING THAT
 8 ACCOUNTS BE OPEN FOR 3 YEARS TO QUALIFY FOR THE BENEFIT OF DEDUCTION OF THE
 9 CONTRIBUTION; CLARIFYING ACCESS TO CERTAIN RECORDS CONCERNING ACCOUNTS; REVISING
 10 DEFINITIONS TO CONFORM TO FEDERAL LAW; CLARIFYING THE INCOME TAX DEDUCTION FOR
 11 CONTRIBUTIONS TO AN ACCOUNT; AUTHORIZING THE USE OF MULTIPLE FINANCIAL INSTITUTIONS
 12 OR MULTIPLE INVESTMENT INSTRUMENTS; AMENDING SECTIONS 15-30-111, 15-62-103, ~~AND~~
 13 15-62-201, AND 15-62-603, MCA; REPEALING SECTION 15-62-204, MCA; AND PROVIDING AN
 14 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

15

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

17

18 NEW SECTION. **Section 1. Deductions for contributions.** An individual who contributes to an
 19 account in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with
 20 ~~15-30-111(7)~~ 15-30-111(8), by the amount of the contribution, but not more than \$3,000. The
 21 contribution must be made to an account owned by the contributor, the contributor's spouse, the
 22 contributor's child, or the contributor's stepchild if the stepchild is a Montana resident.

23

24 NEW SECTION. **Section 2. Tax on certain withdrawals of deductible contributions.** (1) There is
 25 a recapture tax at a rate equal to the ~~maximum possible rate applicable under~~ HIGHEST RATE OF TAX PROVIDED
 26 IN 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under
 27 ~~15-30-111(7)~~ 15-30-111(8).

28 (2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted
 29 gross income, all withdrawals must be allocated between income and contributions in accordance with the
 30 principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C.

1 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated
2 as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of
3 those contributions, and then to contributions that reduced adjusted gross income. The portion of any
4 other withdrawal that is allocated to contributions must be treated as first derived from contributions that
5 reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not
6 reduce adjusted gross income.

7 (3) (a) The recapture tax imposed by this section is payable by the owner of the account from
8 which the withdrawal or contribution was made. The tax liability must be reported on the income tax
9 return of the account owner and is payable with the income tax payment for the year of the withdrawal
10 or at the time that an income tax payment would be due for the year of the withdrawal. The account
11 owner is liable for the tax even if the account owner is not a Montana resident at the time of the
12 withdrawal.

13 (b) The department may require withholding on recapturable withdrawals from an account that
14 was at one time owned by a Montana resident if the account owner is not a Montana resident at the time
15 of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that
16 was at one time owned by a Montana resident must be treated as if the account is owned by a resident
17 of Montana.

18 (4) For the purposes of this section, all contributions made to accounts by residents of Montana
19 are presumed to have reduced the contributor's adjusted gross income unless the contributor can
20 demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors
21 who claim deductions for contributions shall report on their Montana income tax returns the amount of
22 deductible contributions made to accounts for each designated beneficiary and the social security number
23 of each designated beneficiary.

24 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is
25 a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later
26 of:

27 (a) ~~July 1, 1997~~ [THE EFFECTIVE DATE OF THIS ACT]; or

28 (b) the date that is 3 years prior to the date of the withdrawal or distribution.

29 (6) The department shall use all means available for the administration and enforcement of income
30 tax laws in the administration and enforcement of this section.

1

2 **NEW SECTION. Section 3. Access to records.** Information that identifies the contributor, account
3 owner, or designated beneficiary of a family education savings account is exempt from the provisions of
4 2-6-102 and 2-6-104 and any other provision of law permitting the public inspection or copying of
5 documents. The provisions of this section may not prevent the release of information about a specific
6 designated beneficiary to a higher education institution at which the designated beneficiary is enrolled or
7 to which the designated beneficiary has applied for admission.

8

9 **Section 4.** Section 15-30-111, MCA, is amended to read:

10 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income
11 tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62,
12 as that section may be labeled or amended, and in addition includes the following:

13 (a) (i) interest received on obligations of another state or territory or county, municipality, district,
14 or other political subdivision of another state, except to the extent that the interest is exempt from
15 taxation by Montana under federal law;

16 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
17 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest
18 referred to in subsection (1)(a)(i);

19 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in
20 a reduction of Montana income tax liability;

21 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal
22 Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation
23 on the income;

24 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

25 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that
26 the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

27 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable
28 distribution of the same estate or trust, the difference between the state taxable distribution and the
29 federal taxable distribution of the same estate or trust for the same tax period.

30 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or

1 amended, adjusted gross income does not include the following, which are exempt from taxation under
2 this chapter:

3 (a) (i) all interest income from obligations of the United States government, the state of Montana,
4 a county, municipality, or district, or other political subdivision of the state and any other interest income
5 that is exempt from taxation by Montana under federal law;

6 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
7 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest
8 referred to in subsection (2)(a)(i);

9 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and
10 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

11 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
12 received as defined in 15-30-101;

13 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

14 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
15 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross
16 income in excess of \$30,000 as shown on the taxpayer's return;

17 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
18 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
19 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
20 \$30,000 as shown on their joint return;

21 (d) all Montana income tax refunds or tax refund credits;

22 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

23 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered
24 by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and
25 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
26 licensed to provide food, beverage, or lodging;

27 (g) all benefits received under the workers' compensation laws;

28 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
29 the employee under federal law;

30 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against

1 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

2 (j) principal and income in a medical care savings account established in accordance with
3 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the
4 taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the
5 taxpayer;

6 (k) principal and income in a first-time home buyer savings account established in accordance with
7 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time
8 purchase of a single-family residence;

9 (l) ~~money, not exceeding \$3,000 for each taxpayer, contributed to a family education savings~~
10 ~~program account established in accordance with 15-62-201;~~

11 ~~—— (m) principal contributions withdrawn from an a family education savings account or earnings~~
12 ~~withdrawn from a family education savings account for qualified higher education expenses, as defined~~
13 ~~in 15-62-103, for of a designated beneficiary of the taxpayer;~~

14 ~~(n)(m)~~ the recovery during the tax year of any amount deducted in any prior tax year to the extent
15 that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

16 ~~(o)(n)~~ if the federal taxable distribution of an estate or trust is greater than the state taxable
17 distribution of the same estate or trust, the difference between the federal taxable distribution and the
18 state taxable distribution of the same estate or trust for the same tax period; and

19 ~~(p)(o)~~ income of a dependent child that is included in the taxpayer's federal adjusted gross income
20 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return
21 if the child and taxpayer meet the filing requirements in 15-30-142.

22 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
23 shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same
24 manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which
25 the DISC election is effective.

26 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
27 business deductions by an amount for wages and salaries for which a federal tax credit was elected under
28 sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or
29 amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken.
30 The deduction must be made in the year that the wages and salaries were used to compute the credit. In

1 the case of a partnership or small business corporation, the deduction must be made to determine the
2 amount of income or loss of the partnership or small business corporation.

3 (5) Married taxpayers filing a joint federal return who are required to include part of their social
4 security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may
5 split the federal base used in calculation of federal taxable social security benefits or federal taxable tier
6 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must
7 be split equally on the Montana return.

8 (6) A taxpayer receiving retirement disability benefits who has not attained ~~age~~ 65 years of age
9 by the end of the tax year and who has retired as permanently and totally disabled may exclude from
10 adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period
11 during which the employee is absent from work due to the disability. If the adjusted gross income before
12 this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the
13 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not
14 the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion
15 separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on
16 their combined adjusted gross income. For the purpose of this subsection, "permanently and totally
17 disabled" means unable to engage in any substantial gainful activity by reason of any medically determined
18 physical or mental impairment lasting or expected to last at least 12 months.

19 (7) Married taxpayers who file a joint federal return and who make an election on the federal
20 return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA
21 to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may
22 file separate Montana income tax returns to defer the full taxable conversion amount from Montana
23 adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer
24 making the conversion.

25 (8) An individual who contributes to one or more accounts established under the Montana family
26 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of
27 the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess
28 of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the
29 total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross
30 income under this subsection applies only with respect to contributions to an account of which the account

1 owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or taxpayer's child or stepchild
 2 if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) of this
 3 section do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

4 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

5

6 **Section 5.** Section 15-62-103, MCA, is amended to read:

7 **"15-62-103. Definitions.** As used in this chapter, the following definitions apply:

8 (1) "Account" means an individual trust account or savings account established under this chapter.

9 (2) "Account owner" means the person designated at the time that an account is opened as
 10 having the right to withdraw money from the account before the account is disbursed to or for the benefit
 11 of the designated beneficiary.

12 (3) "Board" means the board of regents of higher education established by Article X, section 9,
 13 subsection (2), of the Montana constitution and 2-15-1505.

14 (4) "Committee" means the family education savings program oversight committee established
 15 in 20-25-901.

16 (5) "Designated beneficiary" means, with respect to an account, the person designated at the time
 17 that the account is opened as the person whose higher education expenses are expected to be paid from
 18 the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former
 19 designated beneficiary.

20 (6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings
 21 and loan association, credit union, insurance company, trust company, mutual fund, or other similar entity
 22 that is authorized to do business in this state.

23 (7) "Higher education institution" means:

24 ~~—(a) an eligible educational institution described in the Higher Education Act of 1965, 20 U.S.C.~~
 25 ~~1141(a) and 1088(a); or~~

26 ~~—(b) an area vocational educational school, as defined in section 521(3) of the Carl D. Perkins~~
 27 ~~Vocational Education Act, 20 U.S.C. 2471(3)(C) and (3)(D), that is located in this state as defined in~~
 28 ~~section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).~~

29 (8) "Member of the family" means:

30 ~~—(a) an ancestor of a person;~~

1 ~~—— (b) the spouse of a person;~~

2 ~~—— (c) a lineal descendant, including a legally adopted child, of a person, of a person's spouse, or of~~
3 ~~a parent of a person; or~~

4 ~~—— (d) the spouse of any lineal descendant described in subsection (8)(c), with respect to a designated~~
5 ~~beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the~~
6 ~~Internal Revenue Code, 26 U.S.C. 529(e)(2).~~

7 (9) "Nonqualified withdrawal" means a withdrawal from an account that is not:

8 (a) a qualified withdrawal;

9 (b) a withdrawal made as the result of the death or disability of the designated beneficiary of an
10 account;

11 (c) a withdrawal that is made on the account of a scholarship or the allowance or payment
12 described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or
13 (d)(1)(C), and that is received by the designated beneficiary; or

14 (d) a rollover or change of designated beneficiary described in 15-62-202.

15 (10) "Program" means the family education savings program established pursuant to 15-62-201.
16 The program must be structured to permit the long-term accumulation of savings that can be used to
17 finance all or a share of the costs of higher education.

18 (11) "Qualified higher education expenses" means ~~tuition and fees required for enrollment or~~
19 ~~attendance of a designated beneficiary at a higher education institution~~ qualified higher education
20 expenses, as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

21 (12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher
22 education expenses of the designated beneficiary of the account."

23

24 **Section 6.** Section 15-62-201, MCA, is amended to read:

25 **"15-62-201. Program requirements -- application -- establishment of account -- qualified and**
26 **nonqualified withdrawal -- penalties.** (1) A person who wishes to deposit money into an account to pay
27 the qualified higher education expenses of a designated beneficiary shall:

28 (a) complete an application on the form prescribed by the board that includes:

29 (i) the name, address, and social security number or employer identification number of the
30 contributor;

1 (ii) the name, address, and social security number of the account owner if the account owner is
2 not the contributor;

3 (iii) the name, address, and social security number of the designated beneficiary;

4 (iv) the certification relating to no excess contributions adopted by the board pursuant to
5 20-25-902; and

6 (v) any other information required by the board;

7 (b) pay the one-time application fee established by the board;

8 (c) make the minimum contribution required by the board or by opening an account; and

9 (d) designate the type of account to be opened if more than one type of account is offered.

10 (2) A person shall make contributions to an opened account in cash.

11 (3) An account owner may withdraw all or part of the balance from an account under rules
12 prescribed by the board to enable the board or program manager to determine if a withdrawal is a
13 nonqualified withdrawal or a qualified withdrawal. The rules may require that:

14 (a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a
15 nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses,
16 or other supporting material;

17 (b) qualified withdrawals from an account be made only by a check payable jointly to the
18 designated beneficiary and a higher education institution; and

19 (c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the
20 program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek
21 refunds of penalties directly from the board.

22 (4) If a nonqualified withdrawal is made from an account, an amount equal to 10% of the portion
23 of the proposed withdrawal that would constitute income as determined in accordance with section 529
24 of the Internal Revenue Code, 26 U.S.C. 529, must be withheld as a penalty and paid to the board for use
25 in operating and marketing the program and for state student financial aid. ~~A nonqualified withdrawal
26 constitutes income for Montana purposes to the extent it was previously deducted from income in
27 calculating Montana individual income taxes.~~

28 (5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4)
29 or change the basis of this penalty if the board determines that the amount of the penalty must be
30 increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state

1 tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

2 (6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

3 (a) the penalty is greater than is required to constitute a minimum penalty for purposes of
4 qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code,
5 26 U.S.C. 529; or

6 (b) the penalty, when combined with other revenue generated under this chapter, is producing
7 more revenue than is required to cover the costs of operating and marketing the program and to recover
8 any costs not previously recovered.

9 (7) If an account owner makes a nonqualified withdrawal and a penalty amount is not withheld
10 pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under
11 that subsection for nonqualified withdrawals, the account owner shall pay:

12 (a) the unpaid portion of the penalty to the board at the same time that the account owner files
13 a federal and state income tax return for the taxable year of the withdrawal; or

14 (b) if the account owner does not file a return, the unpaid portion of the penalty on the due date
15 for federal and state income tax returns, including any authorized extensions.

16 (8) Each account must be maintained separately from each other account under the program.

17 (9) Separate records and accounting must be maintained for each account for each designated
18 beneficiary.

19 (10) A contributor to, account owner of, or designated beneficiary of an account may not direct
20 the investment of any contributions to any account or the earnings generated by the account and may not
21 pledge the interest of an account or use an interest in an account as security for a loan.

22 (11) If the board terminates the authority of a financial institution to hold accounts and accounts
23 must be moved from that financial institution to another financial institution, the board shall select the
24 financial institution and type of investment to which the balance of the account is moved unless the
25 internal revenue service provides guidance stating that allowing the account owner to select among several
26 financial institutions that are then contractors would not cause a plan to cease to be a qualified state
27 tuition plan.

28 (12) If there is any distribution from an account to any person or for the benefit of any person
29 during a calendar year, the distribution must be reported to the internal revenue service and the account
30 owner or the designated beneficiary to the extent required by federal law.

1 (13) The financial institution shall provide statements to each account owner at least once each
2 year within 31 days after the 12-month period to which they relate. The statement must identify the
3 contributions made during a preceding 12-month period, the total contributions made through the end of
4 the period, the value of the account as of the end of this period, distributions made during this period, and
5 any other matters that the board requires be reported to the account owner.

6 (14) Statements and information returns relating to accounts must be prepared and filed to the
7 extent required by federal or state tax law or by administrative rule.

8 (15) A state or local government or organizations described in section 501(c)(3) of the Internal
9 Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become
10 the account owner of an account to fund scholarships for persons whose identity will be determined after
11 an account is opened."

12

13 **SECTION 7. SECTION 15-62-203, MCA, IS AMENDED TO READ:**

14 **"15-62-203. Selection of financial institution as account depository and manager -- contract --**
15 **termination.** (1) The board shall implement the program through the use of one or more financial
16 institutions to act as the depository and manager. Under the program, a person may establish accounts
17 at the depository.

18 (2) The committee shall solicit proposals from financial institutions to act as the depositories and
19 managers of the program. Financial institutions that submit proposals shall describe the financial
20 instruments that will be held in accounts.

21 (3) On the recommendation of the committee, the board shall select as program depositories and
22 managers the financial institution or institutions from among bidding financial institutions that demonstrate
23 the most advantageous combination, both to potential program participants and to this state, of:

24 (a) financial stability and integrity;

25 (b) the safety of the investment instruments being offered, taking into account any insurance
26 provided with respect to these instruments;

27 (c) the ability of the investment instruments to track estimated costs of higher education as
28 calculated by the board and provided by the financial institution to the account holder;

29 (d) the ability of the financial institutions, directly or through a subcontract, to satisfy
30 recordkeeping and reporting requirements;

1 (e) the financial institution's plan for promoting the program and the investment that it is willing
2 to make to promote the program;

3 (f) the fees, if any, proposed to be charged to persons for maintaining accounts;

4 (g) the minimum initial deposit and minimum contributions that the financial institution will require
5 and the willingness of the financial institution or its subcontractors to accept contributions through payroll
6 deduction plans and other deposit plans; and

7 (h) any other benefits to this state or its residents contained in the proposal, including an account
8 opening fee payable to the board by the account owner to cover expenses of operation of the program and
9 any additional fee offered by the financial institution for statewide program marketing by the board.

10 (4) The board shall enter into a contract with a financial institution or, except as provided in
11 subsection (5), into contracts with financial institutions to serve as depositories and program managers.

12 (5) The committee may select more than one financial institution ~~and investment for the program~~
13 ~~if:~~

14 ~~—— (a) the internal revenue service has provided guidance that giving a contributor a choice of two~~
15 ~~or more investment instruments under a state plan will not cause the plan to fail to qualify for favorable~~
16 ~~tax treatment under section 529 of the Internal Revenue Code, 26 U.S.C. 529; and~~

17 ~~—— (b) the committee concludes that the choice of instrument vehicles is in the best interest of~~
18 ~~program participants and will not interfere with the promotion of the program. to serve as depository and~~
19 ~~program manager. The committee may select more than one kind of investment instrument to be offered~~
20 ~~through the program. Any decision on the use of multiple financial institutions or multiple investment~~
21 ~~instruments must take into account:~~

22 (a) the requirements for qualifying as a qualified state tuition program under section 529 of the
23 Internal Revenue Code (26 U.S.C. 529);

24 (b) differing needs of contributors regarding risk and potential return of investment instruments;
25 and

26 (c) administrative costs and burdens that may be imposed as the result of the decision.

27 (6) A program manager or its subcontractor shall:

28 (a) take action required to keep the program in compliance with its contract or the requirements
29 of this chapter to manage the program so that it is treated as a qualified state tuition plan under section
30 529 of the Internal Revenue Code, 26 U.S.C. 529;

1 (b) keep adequate records of each account, keep each account segregated from each other
2 account, and provide the board with the information necessary to prepare statements required by
3 15-62-201(12) through (14) or file these statements on behalf of the board;

4 (c) compile and total information contained in statements required to be prepared under
5 15-62-201(12) through (14) and provide these compilations to the board;

6 (d) if there is more than one program manager, provide the board with the information to assist
7 the board in determining compliance with rules adopted by the board pursuant to 20-25-902;

8 (e) provide representatives of the board, including other contractors or other state agencies,
9 access to the books and records of the program manager to the extent needed to determine compliance
10 with the contract. At least once during the term of any contract, the board, its contractor, or the state
11 agency responsible for examination oversight of the program manager shall conduct an examination to the
12 extent needed to determine compliance with the contract.

13 (f) hold all accounts in trust for the benefit of this state and the account owner.

14 (7) A person may not circulate any description of the program, whether in writing or through the
15 use of any media, unless the board or its designee first approves the description.

16 (8) A contract executed between the board and a financial institution pursuant to this section must
17 be for a term of at least 3 years and not more than 7 years.

18 (9) If a contract executed between the board and a financial institution pursuant to this section
19 is not renewed, at the end of the term of the nonrenewed contract:

20 (a) accounts previously established and held in investment instruments at the financial institution
21 may not be terminated;

22 (b) additional contributions may be made to the accounts in existence at the time of nonrenewal
23 of a contract; and

24 (c) new accounts may not be placed with that financial institution unless a new contract is
25 executed.

26 (10) The board may terminate a contract with a financial institution at any time for good cause on
27 the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board
28 shall take custody of accounts held at that financial institution and shall seek to promptly transfer the
29 accounts to another financial institution that is selected as a program manager and into investment
30 instruments as similar as possible to the original investments."

1

2 NEW SECTION. **Section 8. Repealer.** Section 15-62-204, MCA, is repealed.

3

4 NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 3] are intended to be
5 codified as an integral part of Title 15, chapter 62, part 2, and the provisions of Title 15, chapter 62, part
6 2, apply to [sections 1 through 3].

7

8 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

9

10 NEW SECTION. **Section 11. Retroactive applicability.** [This act] applies retroactively, within the
11 meaning of 1-2-109, to tax years beginning after December 31, 2000.

12

- END -