

HOUSE BILL NO. 357

INTRODUCED BY HANSEN, BALLANCE, G. BENNETT, BOULANGER, BRODEHL, DOANE, EDMUNDS,
FISCUS, FLYNN, GLIMM, GREEF, HAGSTROM, HALVORSON, HARRIS, INGRAHAM, D. JONES, KARY,
KERNS, KNUDSEN, LANG, LASZLOFFY, LAVIN, LEWIS, MILLER, O'NEIL, OSMUNDSON, RANDALL,
REDFIELD, REGIER, ROSENDALE, SCHWADERER, C. SMITH, VANCE, WAGONER, WHITE, ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MY CHOICE SAVINGS ACCOUNT
PROGRAM; PROVIDING DEFINITIONS; ESTABLISHING ELIGIBILITY REQUIREMENTS; PROVIDING
RESPONSIBILITIES FOR PARENTS, STUDENTS, THE SUPERINTENDENT OF PUBLIC INSTRUCTION, THE
COMMISSIONER OF HIGHER EDUCATION, AND EDUCATION PROVIDERS; PROVIDING RULEMAKING
AUTHORITY; PROVIDING AN APPROPRIATION AND A STATUTORY APPROPRIATION; AMENDING
SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. My choice savings account -- findings and purposes.** (1) There is a my
choice savings account program to be established as described in [this act] by the start of the 2013-2014 school
year.

(2) The legislature finds that:

(a) parents desire education options for their children;

(b) expanding educational opportunities from kindergarten through postsecondary education within the
state is a valid public purpose; and

(c) creating options that assist parents and encourage students to develop their full educational potential
and pursue postsecondary education is vital to the economic competitiveness of the state.

(3) The purposes of [this act] are to:

(a) enable parents to make short-term and long-term decisions on how best to educate their children in
order to prepare them for postsecondary education and how best to save for that purpose; and

(b) promote the long-term economic competitiveness of the state.

NEW SECTION. **Section 2. Definitions.** As used in this part, the following definitions apply:

1 (1) (a) "Education provider" means, except as provided in subsection (1)(b), a public school, nonpublic
 2 school, accredited virtual school, tutor, or other individual or institution providing education to K-12 students that
 3 has notified the superintendent of public instruction of the education provider's intent to participate in the program
 4 and comply with the program's requirements.

5 (b) The term does not include a home school.

6 (2) "Eligible postsecondary institution" means an accredited postsecondary institution located in Montana
 7 or an accredited postsecondary institution located outside Montana that offers distance or online courses.

8 (3) "My choice savings account" means an account into which ~~public K-12 per-pupil spending~~ A
 9 STUDENT'S PER-ANB ENTITLEMENT is deposited for the purpose of purchasing education instruction from an
 10 education provider or for payment toward college tuition, books, or fees.

11 (4) "Resident school district" means the school district in which a student resides.
 12

13 **NEW SECTION. Section 3. Eligibility.** (1) A student is eligible for a my choice savings account if the
 14 student:

15 (a) was counted during the previous year for purposes of school district ANB funding, was enrolled in
 16 the previous year in a program listed in subsection (2), or is eligible to enter kindergarten;

17 (b) resides in Montana; and

18 (c) has not graduated from high school or reached 19 years of age.

19 (2) A student is not eligible for a my choice savings account while:

20 (a) enrolled in a school operating for the purpose of providing educational services to youth in
 21 department of corrections commitment programs;

22 (b) participating in a virtual school, correspondence school, or distance learning program that receives
 23 state funding pursuant to the student's participation; or

24 (c) enrolled in the Montana school for the deaf and blind.
 25

26 **NEW SECTION. Section 4. Parent and student my choice savings account options.** Money
 27 deposited in a my choice savings account may be used for any of the following on behalf of the student:

28 (1) payment of tuition and fees to an education provider;

29 (2) textbooks and other instructional requirements of an education provider;

30 (3) educational therapies from a licensed or accredited provider;

1 (4) fees for nationally recognized assessment tests, advanced placement exams, entrance examinations
2 at an eligible postsecondary institution, or other assessment instruments;

3 (5) services provided by a public school, including classes and extracurricular activities; and

4 (6) payment to an eligible postsecondary institution for tuition, books, online courses, or other fees.

5
6 **NEW SECTION. Section 5. Parent and student responsibilities.** (1) A parent shall annually ~~enroll~~
7 ~~each child participating in the my choice savings account program with the resident school district and~~ notify the
8 superintendent of public instruction AND THE RESIDENT SCHOOL DISTRICT OF EACH CHILD PARTICIPATING IN THE MY
9 CHOICE SAVINGS ACCOUNT PROGRAM.

10 (2) If a parent seeks to have the parent's child educated through an education provider, then the parent
11 shall:

12 (a) select an education provider and apply for admission for the student;

13 (b) inform the resident school district when the parent enrolls the student with an education provider;

14 (c) pay the balance of the education provider's tuition and fees not covered by the my choice savings
15 account payments; ~~and~~

16 (d) quarterly submit to the superintendent of public instruction copies of all expense receipts and account
17 statements related to the my choice savings account; AND

18 (E) ENSURE THAT THE STUDENT PARTICIPATES IN ANNUAL STATE ASSESSMENT TESTING OR ANOTHER NATIONALLY
19 RECOGNIZED ASSESSMENT AND ANNUALLY REPORT THE STUDENT'S SCORES TO THE SUPERINTENDENT OF PUBLIC
20 INSTRUCTION. THE RESIDENT SCHOOL DISTRICT MAY NOT INCLUDE THESE SCORES IN ITS ASSESSMENT REPORTS.

21 (3) At any time, a parent may choose to have the student attend full-time classes at the resident school
22 district, and payments to the my choice savings account must cease. The parent of a student who returns to the
23 resident school district is responsible for the payment of any outstanding costs to education providers or eligible
24 postsecondary institutions that were incurred and not covered by the my choice savings account funds. A
25 STUDENT WHO RETURNS TO THE RESIDENT SCHOOL DISTRICT IS NOT ELIGIBLE TO ENROLL IN THE MY CHOICE SAVINGS
26 ACCOUNT PROGRAM FOR THE REMAINDER OF THAT SCHOOL YEAR.

27 (4) A student who receives funding from a my choice savings account while attending an education
28 provider shall:

29 (a) remain in attendance unless excused by the education provider for illness or other good cause; AND

30 (b) comply with the education provider's published policies; ~~and~~

1 ~~_____ (c) perform the assessment required by the education provider pursuant to [section 7(3)].~~

2

3 **NEW SECTION. Section 6. Responsibilities of superintendent of public instruction.** (1) The

4 superintendent of public instruction shall establish procedures implementing the following provisions of [this act]:

5 (a) the verification of student eligibility under [section 3];

6 (b) the maintenance and publication of a registry of education providers;

7 (c) the oversight of education providers under [section 7];

8 (d) the calculation of the amount of the my choice savings account payment under [section 8];

9 (e) the payments to the commissioner of higher education and deductions to a resident school district
10 as provided in [section 8];

11 (f) a reporting process by which individuals may notify the superintendent of public instruction of any
12 suspected violation by a parent, education provider, or school district of state laws relating to program
13 participation; and

14 (g) the development of a cooperative agreement with the commissioner of higher education to assist in
15 the administration of my choice savings accounts.

16 (2) (a) The superintendent of public instruction may exclude an education provider from participation in
17 the my choice savings account program if the superintendent establishes that the education provider has:

18 (i) intentionally and substantially misrepresented information required under [section 7];

19 (ii) routinely failed to comply with the accountability standards established in [section 7]; or

20 (iii) operated in this state or another state or jurisdiction in a manner contrary to the health, safety, or
21 welfare of the public.

22 (b) If the noncompliance is correctable within a reasonable amount of time and the health, safety, or
23 welfare of students is not threatened, the superintendent shall issue a notice of noncompliance that provides the
24 education provider with an opportunity to provide evidence of compliance prior to excluding the education provider
25 from participation in the my choice savings account program.

26 (3) If the superintendent of public instruction excludes an education provider from the my choice savings
27 account program, the superintendent shall notify eligible students and parents of the decision immediately.
28 Participating students enrolled with an education provider excluded by the superintendent of public instruction
29 retain my choice savings account program eligibility and may enroll with another education provider.

30

1 NEW SECTION. Section 7. Accountability standards for education providers. (1) To ensure that
2 students are treated fairly and safely, each nonpublic education provider shall:

- 3 (a) comply with applicable local health and safety regulations;
4 (b) hold a valid occupancy permit if required by the municipality;
5 (c) certify that the education provider complies with the nondiscrimination policies set forth in 42 U.S.C.
6 1981; and
7 (d) require that any employee who may have unsupervised access to children be subject to a criminal
8 history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c).

9 (2) To ensure that public funds are spent appropriately, all nonpublic education providers shall
10 demonstrate their financial accountability by:

- 11 (a) quarterly submitting to the superintendent of public instruction on a form established by the
12 superintendent a report of receipts and expenditures for services provided to participating students; and
13 (b) if the superintendent of public instruction determines an audit is needed based on reliable information
14 reporting a misappropriation or mishandling of my choice savings account program funds, submitting to an audit
15 provided for by the superintendent of public instruction to certify that the report to the superintendent is free of
16 material misstatements. The audit must be limited in scope to those records that are necessary to complete the
17 investigation.

18 ~~———(3) To ensure adequate academic progress, nonpublic education providers shall participate in annual~~
19 ~~state assessment testing or provide other nationally recognized assessment, regularly report to the parent on the~~
20 ~~student's progress, and annually report scores to the superintendent of public instruction. The resident school~~
21 ~~district may not include these scores in its assessment reports.~~

22 ~~(4)~~(3) (a) Except as otherwise provided in [this act], a nonpublic education provider is autonomous and
23 is not an agent of the state or federal government:

24 (b) Neither the superintendent of public instruction nor any other state agency may regulate the
25 educational program of a nonpublic education provider that enrolls an eligible student.

26 (c) The creation of the my choice savings account program does not expand the regulatory authority of
27 the state, its officers, or any school district to impose any additional regulation on education providers beyond
28 those reasonably necessary to enforce the requirements of the my choice savings account program.

29

30 NEW SECTION. Section 8. My choice savings account -- funding and amount. (1) The amount of

1 the my choice savings account provided for a single school year must be THE STUDENT'S MAXIMUM RATE PER-ANB
 2 ENTITLEMENT AMOUNT AS PROVIDED IN 20-9-306. ~~65% of the per-pupil average, but not the per-ANB average, of~~
 3 ~~total school expenditures for the resident school district for the previous school year. The superintendent of public~~
 4 ~~instruction shall determine this figure. Funds to be included in total school expenditures must include:~~

- 5 ~~—— (a) general fund;~~
- 6 ~~—— (b) transportation;~~
- 7 ~~—— (c) bus depreciation;~~
- 8 ~~—— (d) food services;~~
- 9 ~~—— (e) tuition;~~
- 10 ~~—— (f) retirement;~~
- 11 ~~—— (g) miscellaneous programs;~~
- 12 ~~—— (h) traffic education;~~
- 13 ~~—— (i) nonoperating;~~
- 14 ~~—— (j) lease-rental agreement;~~
- 15 ~~—— (k) compensated absence fund;~~
- 16 ~~—— (l) metal mines tax reserve;~~
- 17 ~~—— (m) state mining impact;~~
- 18 ~~—— (n) impact aid;~~
- 19 ~~—— (o) litigation reserve;~~
- 20 ~~—— (p) technology acquisition;~~
- 21 ~~—— (q) flexibility fund;~~
- 22 ~~—— (r) debt service;~~
- 23 ~~—— (s) building reserve; and~~
- 24 ~~—— (t) interlocal agreement.~~

25 (2) The resident school district shall continue to include the student in the district's ANB count until the
 26 student has graduated or reached 19 years of age. No other school district may include the student for ANB
 27 purposes.

28 (3) Upon notification by the parent of the student's participation and verification of the student's eligibility
 29 under [section 3], the superintendent of public instruction shall transfer the my choice savings account amount
 30 provided in subsection (1) to the STUDENT'S INDIVIDUAL MY CHOICE SAVINGS ACCOUNT MANAGED BY THE commissioner

1 of higher education in 10 equal payments, payable by the last day of the month, from August through May of the
 2 school year. The superintendent of public instruction may retain up to 2% of the payment amounts for deposit in
 3 the superintendent of public instruction my choice savings account fund established in subsection (5).

4 (4) The superintendent of public instruction shall deduct FOR EACH STUDENT PARTICIPATING IN THE
 5 PROGRAM the my choice savings account amount provided in subsection (1) from the resident school district's aid
 6 payments in 10 equal deductions from August through May of the FOLLOWING school year.

7 (5) (a) There is ~~a~~ AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND ESTABLISHED BY 17-2-102 TO BE KNOWN
 8 AS THE superintendent of public instruction my choice savings account fund, consisting of money retained by the
 9 superintendent of public instruction pursuant to subsection (3). The superintendent of public instruction shall
 10 administer the fund. Money in the fund IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, AND must be used
 11 for the superintendent of public instruction's ~~costs in administering my choice savings accounts~~ RESPONSIBILITIES
 12 FOR ADMINISTERING THE MY CHOICE SAVINGS ACCOUNT PROGRAM.

13 (b) The superintendent of public instruction may adopt rules and policies ~~necessary for the administration~~
 14 ~~of my choice savings accounts~~ RELATING TO THE SUPERINTENDENT'S RESPONSIBILITIES FOR ADMINISTERING THE MY
 15 CHOICE SAVINGS ACCOUNT PROGRAM.

16 (6) IF THE FUNDING APPROPRIATED TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR MAKING TRANSFERS
 17 TO THE COMMISSIONER OF HIGHER EDUCATION PURSUANT TO THIS SECTION IN THE FIRST YEAR OF A STUDENT'S
 18 PARTICIPATION IN THE MY CHOICE SAVINGS ACCOUNT PROGRAM IS NOT SUFFICIENT FOR FISCAL YEAR 2014 OR FISCAL
 19 YEAR 2015, THE SUPERINTENDENT MAY NOT ACCEPT ADDITIONAL NEW PARTICIPANTS FOR THAT FISCAL YEAR.

20
 21 NEW SECTION. Section 9. Responsibilities of commissioner of higher education. (1) The
 22 commissioner of higher education shall:

23 (a) ESTABLISH AND manage individual my choice savings accounts and may contract with private financial
 24 management firms to manage my choice savings accounts with the supervision of the commissioner;

25 (b) adopt rules and establish procedures to administer and manage individual my choice savings
 26 accounts;

27 (c) ensure that parents have the freedom to expend account funds for the purposes listed in [section 4];
 28 and

29 (d) develop a cooperative agreement with the superintendent of public instruction to assist in the
 30 administration of [this act].

1 (2) The commissioner of higher education may retain up to 2% of the payment amounts for deposit in
2 the commissioner of higher education my choice savings account fund established in subsection (3).

3 (3) There is ~~a~~ AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND ESTABLISHED BY 17-2-102 TO BE KNOWN
4 AS THE commissioner of higher education my choice savings account fund, consisting of money retained by the
5 commissioner of higher education pursuant to subsection (2). The commissioner of higher education shall
6 administer the fund. Money in the fund IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, AND must be used
7 for the commissioner of higher education's ~~costs in administering my choice savings accounts~~ RESPONSIBILITIES
8 FOR ADMINISTERING THE MY CHOICE SAVINGS ACCOUNT PROGRAM.

9 (4) On a student's 26th birthday, the student's my choice savings account must be closed and any
10 remaining funds must be returned to the state general fund.

11

12 **SECTION 10. SECTION 17-7-502, MCA, IS AMENDED TO READ:**

13 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
14 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
15 need for a biennial legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
17 of the following provisions:

18 (a) The law containing the statutory authority must be listed in subsection (3).

19 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
20 appropriation is made as provided in this section.

21 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
22 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
23 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
24 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
25 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
26 19-20-604; 19-20-607; 19-21-203; [section 8]; [section 9]; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004;
27 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503;
28 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206;
29 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362;
30 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230;

1 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

2 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 3 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 4 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 5 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 6 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 7 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 8 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
 9 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.
 10 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and
 11 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.
 12 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the
 13 supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621
 14 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30,
 15 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec.
 16 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011,
 17 the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of
 18 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates
 19 June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates
 20 June 30, 2017.)"

21
 22 NEW SECTION. SECTION 11. APPROPRIATION. THERE IS APPROPRIATED \$5 MILLION IN EACH YEAR OF THE
 23 BIENNIUM BEGINNING JULY 1, 2013, FROM THE STATE GENERAL FUND TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION
 24 FOR THE PURPOSE OF MAKING TRANSFERS TO THE COMMISSIONER OF HIGHER EDUCATION PURSUANT TO [SECTION 8] IN
 25 THE FIRST YEAR OF A STUDENT'S PARTICIPATION IN THE MY CHOICE SAVINGS ACCOUNT PROGRAM.

26
 27 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 9] are intended to be
 28 codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 9].
 29

30 NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
2 the part remains in effect in all valid applications that are severable from the invalid applications.

3

4 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

5

- END -