

SENATE BILL NO. 432  
INTRODUCED BY BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE FAMILY EDUCATION SAVINGS ACT TO COMPLY WITH CERTAIN FEDERAL SECURITIES REQUIREMENTS; ESTABLISHING A FAMILY EDUCATION SAVINGS TRUST WITH PARTICIPATING TRUST ACCOUNTS GOVERNING ACCOUNTS; ESTABLISHING THE ROLE OF THE BOARD OF REGENTS AND FINANCIAL INSTITUTIONS; ESTABLISHING A TRANSITION TO THE ADMINISTRATION UNDER THE TRUST; PROVIDING FOR INDIVIDUAL TRUST ACCOUNTS WITH A FINANCIAL INSTITUTION IF THE BOARD DETERMINES THAT CERTIFICATES OF DEPOSITS AND SAVINGS ACCOUNTS ARE NOT SEPARATELY INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION UNDER THE FAMILY EDUCATION TRUST; AMENDING SECTIONS 15-62-103, 15-62-201, 15-62-203, AND 20-25-902, MCA."

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

**NEW SECTION. Section 1. Family education savings trust.** (1) There is a family education savings trust THAT IS AN INSTRUMENTALITY OF THE STATE AND THAT IS CREATED FOR A PUBLIC PURPOSE. The trust consists of participating trusts with each participating trust corresponding to an account. The assets of one participating trust may not be commingled with the assets of any other participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations of any other participating trust. EACH PARTICIPATING TRUST ACCOUNT REPRESENTS A TRUST INTEREST IN THE TRUST AND INCLUDES AMOUNTS RECEIVED BY THE PROGRAM FROM ACCOUNT OWNERS PURSUANT TO THE PARTICIPATING TRUST AGREEMENT AND INTEREST AND INVESTMENT INCOME EARNED BY THE TRUST ACCOUNT.

(2) The assets of the trust consist of investments and earnings on investments of funds received by the program as deposits to accounts and amounts transferred to the trust from accounts established prior to [the effective date of this act] pursuant to subsection (3).

(3) In accordance with the instructions of the account owner, the trustee shall invest funds deposited in each participating trust in permitted investment products as provided in this chapter. The trustee or a financial institution acting as an agent of the trustee shall pay or apply funds from each participating trust for qualified withdrawals, nonqualified withdrawals, penalties, and withholdings.

(4) (a) After [the effective date of this act] and before the mandatory transfer date specified in subsection

(4)(b), each account owner must be provided with notice of the creation of the family education savings trust, the participating trust agreement, and documents describing the options and actions available to the account owner. An account owner may execute a participating trust agreement and have funds that are held by financial institutions in accounts established prior to [the effective date of this act] transferred to the trust and to a participating trust corresponding to the transferor's account. Until a voluntary transfer occurs pursuant to this subsection (4)(a) or a mandatory transfer occurs pursuant to subsection (4)(b), accounts established prior to [the effective date of this act] remain valid and are governed by this chapter as it read prior to [the effective date of this act].

(b) On December 31, 2005, or at a later date set by the board to protect account owners from possible adverse consequences, all remaining funds or investment products that are not transferred pursuant to subsection (4)(a) and that are held by financial institutions in accounts established pursuant to this chapter prior to [the effective date of this act] must be transferred to the trust. The funds or investment products must be placed in a participating trust corresponding to the account and each account owner whose account is transferred is considered to have consented to and be bound by a participating trust agreement and to the transfer of funds or investment products held in the account to a new participating trust.

**NEW SECTION. Section 2. Temporary savings account program.** (1) If the board offers an investment product of certificates of deposit or bank savings accounts insured by the federal deposit insurance corporation, the board may provide for the holding of those investment products by a financial institution as trust accounts for the account owner without being part of the participating trust arrangement for the trust.

(2) Certificates of deposit and bank savings accounts not held as part of the trust are to be held as trust accounts under conditions set by the board based on, as applicable, conditions required for participating trust accounts under this chapter. The provisions of this chapter that apply to reporting, holding, management, and other administrative and tax consequences of a participating trust account of the family savings trust apply to trust accounts under this section.

(3) If trust accounts have been established under subsection (2) and the board determines that it would be in the best interest of the program for those accounts to become part of the family education savings trust, the board may merge the trust accounts established under subsection (2) into the trust. The board shall establish a transfer date. The board shall give at least ~~6 months'~~ 90 DAYS' notice to owners of trust accounts established under subsection (2) of the intent to merge and a description of the options available to an account owner upon merger. Each owner of a trust account established under subsection (2) may execute a participating trust

agreement and have the title to the owner's trust account that is held by a financial institution transferred to the trust and to a participating trust corresponding to an account for the account owner. On the transfer date, all accounts not transferred by account owners must be transferred by the board to the trust and placed in participating trusts corresponding to accounts and each owner whose account has been transferred is considered to have consented to and be bound by the participating trust agreement and to the transfer of the account.

**Section 3.** Section 15-62-103, MCA, is amended to read:

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

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

(2) "Account owner" means the person who enters into a participating trust agreement and who is designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.

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

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

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

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

(7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

(8) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

(9) "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

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

- (a) a qualified withdrawal;
- (b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;
- (c) a withdrawal that is made on the account of a scholarship or the allowance or payment 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 (d)(1)(C), and that is received by the designated beneficiary; or
- (d) a rollover or change of designated beneficiary described in 15-62-202.

(11) "Participating trust agreement" means an agreement among BETWEEN the board, the AS trustee AND AS ADMINISTRATOR OF THE PROGRAM, and the account owner that creates a trust interest in the trust and provides for participation in the program.

~~(11)~~(12) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

~~(12)~~(13) "Qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

~~(13)~~(14) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

(15) "Trust" means the family education savings trust established by [section 1].

(16) "Trustee" means the board in its capacity as trustee of the trust.

(17) "Trust interest" means an account owner's interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary."

**Section 4.** Section 15-62-201, MCA, is amended to read:

**"15-62-201. Program requirements -- application -- establishment of account -- qualified and nonqualified withdrawal -- penalties.** (1) THE PROGRAM MUST BE OPERATED THROUGH USE OF ACCOUNTS IN THE TRUST ESTABLISHED BY ACCOUNT OWNERS. PAYMENTS TO THE TRUST FOR PARTICIPATION IN THE PROGRAM MUST BE MADE BY ACCOUNT OWNERS PURSUANT TO PARTICIPATING TRUST AGREEMENTS. A person who wishes to ~~deposit money into~~ PARTICIPATE IN THE PROGRAM AND open an account into which funds will be deposited to pay the qualified higher education expenses of a designated beneficiary shall:

(a) enter into a participating trust agreement pursuant to which an account will be established as a participating trust of the trust;

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

- (i) the name, address, and social security number or employer identification number of the contributor;
- (ii) the name, address, and social security number of the account owner if the account owner is not the contributor;
- (iii) the name, address, and social security number of the designated beneficiary;
- (iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902;
- (v) the designation of the financial institution with which the funds in the participating trust will be invested; and

~~(v)~~(vi) any other information required by the board;

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

~~(e)~~(d) make the minimum contribution required by the board or by opening an account; and

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

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

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board. The rules must be used to help the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the board concludes that it is necessary for the board or program manager to make that determination. The rules may require that:

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

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

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

(4) If the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529. The penalty must be withheld and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or

change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

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

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

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

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

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

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

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

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

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account in violation of section 529 of the Internal Revenue Code, 26 U.S.C. 529, and may not pledge the interest of an account or use an interest in an account as security for a loan.

~~(11) If, pursuant to 15-62-203(10), the board terminates the authority of a financial institution to serve as program manager and accounts held by or through the program manager must be moved from that financial institution to another financial institution, the board shall select the financial institution to which the accounts are to be moved. If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts unless the account owner is permitted under the applicable rules of the internal revenue service to select new investments for the account without violating rules prohibiting investment direction.~~

~~(12)~~(11) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

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

~~(14)~~(13) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

~~(15)~~(14) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened."

**Section 5.** Section 15-62-203, MCA, is amended to read:

**"15-62-203. Selection of financial institution as program manager -- contract -- termination.** (1) The board shall implement the operation of the program through the use of one or more financial institutions to act as the program manager. Under the program, a person may submit applications for enrollment in the program and participating trust agreements to a program manager and establish accounts in the trust at the location of or through the program manager. An account owner may deposit money in an account in the trust by paying the money to a program manager who shall accept the money as an agent for the trust. Accounts may be invested in one or more investment products approved by the board.

(2) The committee shall solicit proposals from financial institutions to act as managers of the program. Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program.

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

(a) financial stability and integrity;

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

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

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

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

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

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

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

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as program managers. The contracts must provide the terms and conditions by which financial institutions, AS AGENTS OF THE TRUST, may assist in selling interests in the trust and the manner in which funds of a participating trust that are designated for investment with or through the financial institution will be invested.

(5) The board may select more than one financial institution to serve as program manager. The board may select more than one kind of investment product to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment products must take into account:

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

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

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

(6) A program manager or its subcontractor shall:

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



(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201~~(12)~~(11) through ~~(14)~~ (13) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201~~(12)~~(11) through ~~(14)~~ (13) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to 20-25-902 and to comply with any state or federal tax reporting requirements;

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

(f) hold all accounts in trust for the benefit of this state participating trusts invested by or through the financial institution in the name of and for the benefit of the trust and the account owner;

(g) assist the trustee with respect to any federal or tax filing requirements relating to the program and with respect to any other obligations of the trustee.

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

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

(9) IF THE BOARD DETERMINES NOT TO RENEW THE APPOINTMENT OF A FINANCIAL INSTITUTION AS PROGRAM MANAGER, THE BOARD MAY TAKE ACTION CONSISTENT WITH THE INTEREST OF THE PROGRAM AND THE ACCOUNTS AND IN ACCORDANCE WITH ITS DUTIES AS TRUSTEE OF THE TRUST. If Except as provided in subsection (10), if a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established through the efforts of the financial institution may not be terminated by the trustee or board and;

~~—(b) additional contributions may be made to the those accounts in existence at the time of nonrenewal of a contract;~~

~~(c)(b) the funds in new accounts may not be placed with that established after the termination may not~~

be invested by or through the financial institution unless a new contract is executed; and

(d)(c) except as provided in subsection (10), accounts under the supervision of participating trusts invested by or through the program manager financial institution must continue to be invested in the financial products in which they were invested prior to the nonrenewal unless the account owner selects a different investment product without violating 15-62-201(10); and

(d) the continuing role of the financial institution must be governed by rules or policies established by the board or a special contract AND ALL SERVICES PROVIDED BY THE FINANCIAL INSTITUTION TO ACCOUNTS CONTINUE TO BE SUBJECT TO THE CONTROL OF THE BOARD AS TRUSTEE OF THE TRUST WITH RESPONSIBILITY FOR ALL ACCOUNTS IN THE PROGRAM.

(10) (a) The board may terminate a contract with a financial institution or prohibit the continued investment of funds by or through a financial institution under subsection (9) at any time for good cause on the recommendation of the committee. If a contract is terminated or investment is prohibited pursuant to this subsection, the board trustee shall take custody of accounts account funds or assets held at that financial institution and shall seek to promptly transfer the accounts to reinvest the funds or assets by or through another financial institution that is selected as a program manager by the board and into the same investment products or investment products selected by the board that are as similar as possible to the original investments.

(b) Prior to taking the actions described in subsection (10)(a), the board shall give account owners notice of the termination and a reasonable period of time, not to exceed 30 days, to voluntarily terminate the account invested by or through the financial institution or, to the extent not prohibited by 15-62-201(10), to direct that the account be invested with or through another program manager.

(c) If the termination of a program manager causes an emergency that might lead to a loss of funds to any account owner, the board or trustee may take whatever emergency action is necessary or appropriate to prevent the loss of funds invested pursuant to this chapter. After taking emergency action, the board shall provide notice and opportunity for action to account owners as provided in subsection (10)(b)."

**Section 6.** Section 20-25-902, MCA, is amended to read:

**"20-25-902. Board -- powers and duties.** (1) The board shall:

(a) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

(c) make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(d) charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) select the financial institution or institutions to act as the PROGRAM manager ~~of the program~~ pursuant to 15-62-203;

(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:

(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(ii) the establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:

(A) a maximum college savings amount established by the board; or

(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(iv) requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section; ~~and~~

(g) adopt procedures as necessary to implement Title 15, chapter 62; ~~and~~

(h) serve as trustee of the family education savings trust established in [section 1];

(i) ENTER INTO PARTICIPATING TRUST AGREEMENTS WITH ACCOUNT OWNERS; AND

(j) MAINTAIN THE PROGRAM ON BEHALF OF THE STATE AS REQUIRED BY SECTION 529 OF THE INTERNAL REVENUE CODE, 26 U.S.C. 529.

(2) The definitions in 15-62-103 apply to this section."

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 62, and the provisions of Title 15, chapter 62, apply to [sections 1 and 2].

- END -