

SENATE BILL NO. 328

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A BILL FOR AN ACT ENTITLED: "AN ACT TO ENCOURAGE SAVINGS FOR HIGHER EDUCATION AND REDUCE THE DEBT LOAD OF STUDENTS; ESTABLISHING THE EDUCATION IS THE BEST BET SAVINGS ACCOUNT PROGRAM; PROVIDING A PROGRAM DESCRIPTION AND REQUIREMENTS FOR THE COMMISSIONER OF HIGHER EDUCATION IN ADMINISTERING THE PROGRAM; REDIRECTING A PORTION OF LOTTERY REVENUE TO FUND THE PROGRAM; REQUIRING A CHECK BOX ON BIRTH CERTIFICATES TO FACILITATE ENROLLMENT IN THE PROGRAM; AMENDING SECTIONS 23-7-402 AND 50-15-221, MCA; AND PROVIDING AN EFFECTIVE DATE DATES AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4 5] may be cited as the "Education Is the Best Bet Savings Account Program Act".

NEW SECTION. **Section 2. Purpose.** (1) The purposes of [sections 1 through 4 5] are to:

- (a) cultivate a culture in which children envision their education continuing beyond high school in order to improve the quality of life for all Montanans;
- (b) utilize modest state investments in individual Montana children to encourage greater long-term investments by parents and others for the higher education costs of Montana children; and
- (c) reduce the debt load of future generations for higher education.

(2) The legislature intends to fulfill the purposes under subsection (1) by stimulating greater investment in family education savings accounts pursuant to Title 15, chapter 62.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 4 5], the following definitions apply:



1 (1) "Education is the best bet account" or "account" means an account within the private purpose trust
2 fund established for an eligible resident child of Montana and funded by contributions by the state of Montana.

3 (2) "Family education savings account" means an account established under Title 15, chapter 62.
4

5 **NEW SECTION. Section 4. Education is the best bet savings account program -- administration.**

6 (1) There is an education is the best bet savings account program administered by the commissioner of higher
7 education.

8 (2) (a) A resident child of Montana is eligible to have an account established on the child's behalf on the
9 child's birth or adoption. An account must be established only:

10 (i) on a parent's request for the establishment indicated on the child's Montana birth registry form; or

11 (ii) under conditions established by the commissioner of higher education that allow for the establishment
12 of an account for residents of Montana who become adoptive parents or give birth outside the state of Montana.

13 (b) The commissioner shall ensure that residents of Montana who become parents under subsection
14 (2)(a)(ii) have the opportunity to learn about the program and request the establishment of an account.

15 (c) If an adopted child already has an established account, a second account may not be established;
16 however, in this circumstance, the commissioner shall transfer an amount equal to the amount contributed to the
17 child's family education savings account within 1 year of the child's adoption, with the total lifetime state
18 contribution to the account not to exceed \$200.

19 (3) There is a higher education generation account within the state special revenue fund created in
20 17-2-102. The higher education generation account is administered by the commissioner of higher education.

21 (4) Upon the establishment of an education is the best bet account, the commissioner shall transfer \$25
22 from the higher education generation account to the child's education is the best bet account.

23 (5) For the first 2 years of a child's life, the commissioner shall transfer an amount equal to the amount
24 contributed to the child's family education savings account from the higher education generation account to the
25 child's education is the best bet account. The total state contribution to a child's account may not exceed \$100
26 per year, including the initial \$25.

27 (6) A child's education is the best bet account must remain separate from the child's family education
28 savings account and must be invested as determined by the commissioner of higher education. The
29 commissioner of higher education shall distribute interest earnings in proportion to the balances of individual
30 accounts. Only the funds transferred under subsections (4) and (5) and interest earnings may be deposited in

1 an education is the best bet account.

2 (7) A child's education is the best bet account must be closed and any funds in the account transferred
3 to the higher education generation account under any of the following circumstances:

4 (a) if, on the child's second birthday, a family education savings account has not been established on
5 behalf of the child with a contribution of at least \$25; ~~or~~

6 (b) if the child's family education savings account is closed, the designated beneficiary is changed, or
7 funds are withdrawn for expenses other than qualified higher education expenses leaving a balance of less than
8 the balance of the child's education is the best bet account; OR

9 (C) IF THE CHILD HAS NOT UTILIZED ALL FUNDS IN THE ACCOUNT BY THE CHILD'S 25TH BIRTHDAY.

10 (8) (a) The designated beneficiary of an education is the best bet account may not be changed.

11 (b) ~~Funds~~ THE COMMISSIONER SHALL DISTRIBUTE FUNDS in an education is the best bet account ~~may be~~
12 ~~spent only on~~ ONLY TO THE DESIGNATED BENEFICIARY OR THE DESIGNATED BENEFICIARY'S PARENT FOR qualified higher
13 education expenses, as defined in 15-62-103.

14 (9) The commissioner shall market the education is the best bet savings account program to ensure
15 widespread awareness. The marketing effort must include program information distributed to a parent of a
16 Montana resident child following the parent's request to establish an account and 60 days prior to the child's first
17 and second birthdays. The commissioner shall inform parents of the account balance annually.

18 (10) The commissioner may spend no more than 5% of any funds transferred to the higher education
19 generation account on administering and marketing the program.

20 (11) The commissioner shall adopt policies for the administration of the education is the best bet savings
21 account program.

22

23 **NEW SECTION. SECTION 5. EDUCATION IS THE BEST BET SAVINGS ACCOUNT PROGRAM -- ADMINISTRATION.**

24 (1) THERE IS AN EDUCATION IS THE BEST BET SAVINGS ACCOUNT PROGRAM ADMINISTERED BY THE COMMISSIONER OF
25 HIGHER EDUCATION.

26 (2) (A) A RESIDENT CHILD OF MONTANA IS ELIGIBLE TO HAVE AN ACCOUNT ESTABLISHED ON THE CHILD'S BEHALF
27 ON THE CHILD'S BIRTH OR ADOPTION. AN ACCOUNT MUST BE ESTABLISHED ONLY:

28 (I) ON A PARENT'S REQUEST FOR THE ESTABLISHMENT INDICATED ON THE CHILD'S MONTANA BIRTH REGISTRY
29 FORM; OR

30 (II) UNDER CONDITIONS ESTABLISHED BY THE COMMISSIONER OF HIGHER EDUCATION THAT ALLOW FOR THE

1 ESTABLISHMENT OF AN ACCOUNT FOR RESIDENTS OF MONTANA WHO BECOME ADOPTIVE PARENTS OR GIVE BIRTH OUTSIDE
2 THE STATE OF MONTANA.

3 (B) THE COMMISSIONER SHALL ENSURE THAT RESIDENTS OF MONTANA WHO BECOME PARENTS UNDER
4 SUBSECTION (2)(A)(II) HAVE THE OPPORTUNITY TO LEARN ABOUT THE PROGRAM AND REQUEST THE ESTABLISHMENT OF
5 AN ACCOUNT.

6 (C) IF AN ADOPTED CHILD ALREADY HAS AN ESTABLISHED ACCOUNT, A SECOND ACCOUNT MAY NOT BE
7 ESTABLISHED; HOWEVER, IN THIS CIRCUMSTANCE, THE COMMISSIONER SHALL TRANSFER AN AMOUNT EQUAL TO THE
8 AMOUNT CONTRIBUTED TO THE CHILD'S FAMILY EDUCATION SAVINGS ACCOUNT WITHIN 1 YEAR OF THE CHILD'S ADOPTION,
9 WITH THE TOTAL LIFETIME STATE CONTRIBUTION TO THE ACCOUNT NOT TO EXCEED \$200.

10 (3) THERE IS A HIGHER EDUCATION GENERATION ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND CREATED
11 IN 17-2-102. THE HIGHER EDUCATION GENERATION ACCOUNT IS ADMINISTERED BY THE COMMISSIONER OF HIGHER
12 EDUCATION.

13 (4) UPON THE ESTABLISHMENT OF AN EDUCATION IS THE BEST BET ACCOUNT, THE COMMISSIONER SHALL
14 TRANSFER \$25 FROM THE HIGHER EDUCATION GENERATION ACCOUNT TO THE CHILD'S EDUCATION IS THE BEST BET
15 ACCOUNT.

16 (5) FOR THE FIRST 2 YEARS OF A CHILD'S LIFE, THE COMMISSIONER SHALL TRANSFER AN AMOUNT EQUAL TO THE
17 AMOUNT CONTRIBUTED TO THE CHILD'S FAMILY EDUCATION SAVINGS ACCOUNT FROM THE HIGHER EDUCATION GENERATION
18 ACCOUNT TO THE CHILD'S EDUCATION IS THE BEST BET ACCOUNT. THE TOTAL STATE CONTRIBUTION TO A CHILD'S
19 ACCOUNT MAY NOT EXCEED \$100 PER YEAR, INCLUDING THE INITIAL \$25.

20 (6) A CHILD'S EDUCATION IS THE BEST BET ACCOUNT MUST REMAIN SEPARATE FROM THE CHILD'S FAMILY
21 EDUCATION SAVINGS ACCOUNT AND MUST BE INVESTED AS DETERMINED BY THE COMMISSIONER OF HIGHER EDUCATION.
22 THE COMMISSIONER OF HIGHER EDUCATION SHALL DISTRIBUTE INTEREST EARNINGS IN PROPORTION TO THE BALANCES
23 OF INDIVIDUAL ACCOUNTS. ONLY THE FUNDS TRANSFERRED UNDER SUBSECTIONS (4) AND (5) AND INTEREST EARNINGS
24 MAY BE DEPOSITED IN AN EDUCATION IS THE BEST BET ACCOUNT.

25 (7) A CHILD'S EDUCATION IS THE BEST BET ACCOUNT MUST BE CLOSED AND ANY FUNDS IN THE ACCOUNT
26 TRANSFERRED TO THE HIGHER EDUCATION GENERATION ACCOUNT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

27 (A) IF, ON THE CHILD'S SECOND BIRTHDAY, A FAMILY EDUCATION SAVINGS ACCOUNT HAS NOT BEEN ESTABLISHED
28 ON BEHALF OF THE CHILD WITH A CONTRIBUTION OF AT LEAST \$25; OR

29 (B) IF THE CHILD'S FAMILY EDUCATION SAVINGS ACCOUNT IS CLOSED, THE DESIGNATED BENEFICIARY IS CHANGED,
30 OR FUNDS ARE WITHDRAWN FOR EXPENSES OTHER THAN QUALIFIED HIGHER EDUCATION EXPENSES LEAVING A BALANCE

1 OF LESS THAN THE BALANCE OF THE CHILD'S EDUCATION IS THE BEST BET ACCOUNT.

2 (8) (A) THE DESIGNATED BENEFICIARY OF AN EDUCATION IS THE BEST BET ACCOUNT MAY NOT BE CHANGED.

3 (B) THE COMMISSIONER SHALL DISTRIBUTE FUNDS IN AN EDUCATION IS THE BEST BET ACCOUNT ONLY TO THE
4 DESIGNATED BENEFICIARY OR THE DESIGNATED BENEFICIARY'S PARENT FOR QUALIFIED HIGHER EDUCATION EXPENSES,
5 AS DEFINED IN 15-62-103, THAT WERE INCURRED WITHIN A UNIT OF THE MONTANA UNIVERSITY SYSTEM.

6 (C) (I) THE COMMISSIONER MAY ACCEPT DONATIONS FROM PRIVATE SOURCES FOR DISTRIBUTION TO THE
7 DESIGNATED BENEFICIARY OR THE DESIGNATED BENEFICIARY'S PARENT FOR QUALIFIED HIGHER EDUCATION EXPENSES,
8 AS DEFINED IN 15-62-103, THAT WERE INCURRED AT A HIGHER EDUCATION INSTITUTION, AS DEFINED IN 15-62-103, THAT
9 IS NOT WITHIN A UNIT OF THE MONTANA UNIVERSITY SYSTEM.

10 (II) THE DISTRIBUTIONS UNDER SUBSECTION (8)(C)(I) MAY NOT EXCEED THE BALANCE OF THE DESIGNATED
11 BENEFICIARY'S EDUCATION IS THE BEST BET ACCOUNT.

12 (III) WHEN A DESIGNATED BENEFICIARY OF AN EDUCATION IS THE BEST BET ACCOUNT RECEIVES DISTRIBUTIONS
13 UNDER SUBSECTION (8)(C)(I) TOTALING THE BALANCE OF THE ACCOUNT, THE DESIGNATED BENEFICIARY'S ACCOUNT MUST
14 BE CLOSED AND ANY FUNDS IN THE ACCOUNT MUST BE TRANSFERRED TO THE HIGHER EDUCATION GENERATION ACCOUNT.

15 (IV) AN INDIVIDUAL RECEIVING DISTRIBUTIONS UNDER SUBSECTION (8)(B) IS NOT ELIGIBLE FOR DISTRIBUTIONS
16 UNDER THIS SUBSECTION (8)(C).

17 (9) THE COMMISSIONER SHALL MARKET THE EDUCATION IS THE BEST BET SAVINGS ACCOUNT PROGRAM TO
18 ENSURE WIDESPREAD AWARENESS. THE MARKETING EFFORT MUST INCLUDE PROGRAM INFORMATION DISTRIBUTED TO
19 A PARENT OF A MONTANA RESIDENT CHILD FOLLOWING THE PARENT'S REQUEST TO ESTABLISH AN ACCOUNT AND 60 DAYS
20 PRIOR TO THE CHILD'S FIRST AND SECOND BIRTHDAYS. THE COMMISSIONER SHALL INFORM PARENTS OF THE ACCOUNT
21 BALANCE ANNUALLY.

22 (10) THE COMMISSIONER MAY SPEND NO MORE THAN 5% OF ANY FUNDS TRANSFERRED TO THE HIGHER
23 EDUCATION GENERATION ACCOUNT ON ADMINISTERING AND MARKETING THE PROGRAM.

24 (11) THE COMMISSIONER SHALL ADOPT POLICIES FOR THE ADMINISTRATION OF THE EDUCATION IS THE BEST BET
25 SAVINGS ACCOUNT PROGRAM.

26

27 **Section 6.** Section 23-7-402, MCA, is amended to read:

28 **"23-7-402. (Temporary) Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets
29 or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in
30 17-7-502, to the lottery.

1 (2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

2 (3) Lottery contractor fees, which are fees paid to contracted lottery vendors based on sales, must be
3 paid from the state lottery enterprise fund. The money to pay lottery contractor fees is statutorily appropriated,
4 as provided in 17-7-502, to the lottery.

5 (4) That part of all gross revenue not used for the payment of prizes, commissions, and operating
6 expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise
7 fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401
8 as follows:

9 (a) to the higher education generation account established in [section 2 4]:

10 (i) ~~\$675,000~~ \$625,000; or

11 (ii) if the total net revenue for the quarter is less than ~~\$675,000~~ \$625,000, the total net revenue; and

12 (b) any remaining funds to the state general fund.

13 (5) The spending authority of the lottery may be increased in accordance with this section upon review
14 and approval of a revised operation plan by the office of budget and program planning. (Terminates June 30,
15 2019--sec. 3, Ch. 2, L. 2013.)

16 **23-7-402. (Effective July 1, 2019) Disposition of revenue.** (1) A minimum of 45% of the money paid
17 for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided
18 in 17-7-502, to the lottery.

19 (2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

20 (3) That part of all gross revenue not used for the payment of prizes, commissions, and operating
21 expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise
22 fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401

23 as follows:

24 (a) to the higher education generation account established in [section 2 4]:

25 (i) ~~\$675,000~~ \$625,000; or

26 (ii) if the total net revenue for the quarter is less than ~~\$675,000~~ \$625,000, the total net revenue; and

27 (b) any remaining funds to the state general fund.

28 (4) The spending authority of the lottery may be increased in accordance with this section upon review
29 and approval of a revised operation plan by the office of budget and program planning."

30

1 **Section 7.** Section 50-15-221, MCA, is amended to read:

2 **"50-15-221. Birth registration.** (1) A certificate of birth must be filed as specified in this section with the
3 department for each live birth that occurs in this state. Unless otherwise directed by the department, the certificate
4 must be filed within the time prescribed by the department by rule after the birth. The birth certificate must be
5 registered if it has been completed and filed in accordance with this section and rules adopted to implement this
6 section.

7 (2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by the
8 attending physician or the physician's designee.

9 (3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or the
10 person's authorized designee shall obtain the personal data concerning the newborn child, prepare the certificate,
11 and certify that the child was born alive at the place, at the time, and on the date stated. Certification may be by
12 signature or by an approved electronic process. The person referenced in this subsection shall file the certificate
13 as directed in subsection (1). The physician or other person in attendance at the birth shall provide the medical
14 information required by the certificate within 72 hours after the birth.

15 (4) The department shall, by rule, determine what evidence may be required to establish the facts of birth
16 if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the
17 department, the certificate must be prepared and filed by one of the following persons in the indicated order of
18 priority in subsections (4)(a) through (4)(e):

19 (a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter 27, in
20 attendance at or immediately after the birth;

21 (b) a person in attendance at or immediately after the birth;

22 (c) the father or the mother;

23 (d) in the absence of the father and the inability of the mother, the person in charge of the premises
24 where the birth occurred; or

25 (e) the local registrar, if 50-15-202 applies.

26 (5) When a birth occurs on a moving conveyance within the United States and the newborn child is first
27 removed from the conveyance in this state, the birth must be registered in this state by a person listed in
28 subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth.
29 When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country
30 or its air space and the child is first removed from the conveyance in this state, the birth must be registered by

1 a person listed in subsection (4) in this state, but the certificate must indicate the actual place of birth insofar as
2 the place can be determined.

3 (6) For the purposes of birth registration, the woman who gives birth to the child is considered to be the
4 mother, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing
5 of the birth certificate. Information about the father must be entered as provided in subsection (7).

6 (7) (a) If the mother was married at the time of conception or birth or between conception and birth, the
7 name of the husband must be entered on the certificate as the father of the child, unless:

8 (i) other paternity has been determined by a court of competent jurisdiction;

9 (ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the
10 father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be
11 individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from
12 the certificate.

13 (iii) the mother executes an affidavit attesting that the husband is not the father and names a putative
14 father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying
15 paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature
16 on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the
17 father on the certificate.

18 (b) If the mother was not married at the time of conception or birth or between conception and birth, the
19 name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and
20 the person to be named as the father.

21 (c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father and
22 surname of the child must be entered on the certificate of birth in accordance with the finding and order of the
23 court.

24 (d) If the father is not named on the certificate of birth, information about the father may not be entered
25 on the certificate.

26 (e) Affidavits required under this subsection (7) must be filed with the department.

27 (8) Either parent of the child, or another informant, shall verify the accuracy of the personal data to be
28 entered on the certificate in order to permit the filing of the certificate within the time prescribed in subsection (1).

29 (9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the date
30 of birth must be registered by the natural parents, the adoptive parents, or the person having legal custody of the

1 child, on the standard form of live birth certificate in the manner prescribed in this section and by rule. The
 2 certificate may not be designated as delayed. The department may require additional evidence in support of the
 3 facts of birth.

4 (10) The department shall include on the certificate of birth a component by which a parent can indicate
 5 a request to have an education is the best bet account established for the child pursuant to [sections 1 through
 6 4 5]. When a parent indicates this request, the department shall provide the commissioner of higher education
 7 with the name of the child and the name and contact information of the child's parents."

8
 9 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 4 5] are intended to be
 10 codified as an integral part of Title 20, chapter 26, and the provisions of Title 20, chapter 26, apply to [sections
 11 1 through 4 5].

12
 13 NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
 14 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
 15 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
 16 APPLICATIONS.

17
 18 ~~NEW SECTION. Section 8. Effective date. [Section 5] and this section are effective July 1, 2015.~~

19
 20 NEW SECTION. SECTION 10. EFFECTIVE DATE -- CONTINGENT EFFECTIVE DATE -- CONTINGENT TERMINATION
 21 DATE. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] IS EFFECTIVE JULY 1, 2015.

22 (2) [SECTION 4] TERMINATES IF [SECTION 4] IS FOUND TO BE INVALID OR UNCONSTITUTIONAL AS PROVIDED FOR
 23 IN SUBSECTION (3).

24 (3) [SECTION 5] IS EFFECTIVE CONTINGENT ON A FINAL COURT RULING THAT [SECTION 4] IS INVALID OR
 25 UNCONSTITUTIONAL. IF [SECTION 4] IS FOUND TO BE INVALID OR UNCONSTITUTIONAL, THE DEPARTMENT OF JUSTICE SHALL
 26 NOTIFY THE CODE COMMISSIONER WHEN THE CONTINGENCY HAS BEEN MET.

27 - END -