

HOUSE BILL NO. 288

INTRODUCED BY M. CAFERRO

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REQUIREMENTS OF THE
5 ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM; EXPANDING THE FAMILY MEMBERS
6 ELIGIBLE FOR A TAX DEDUCTION FOR CONTRIBUTIONS TO ABLE ACCOUNTS; REVISING
7 REQUIREMENTS FOR OPENING AN ACCOUNT; AMENDING SECTIONS 53-25-102, 53-25-103, 53-25-104,
8 53-25-105, 53-25-109, 53-25-110, 53-25-111, 53-25-112, 53-25-113, 53-25-117, 53-25-118, 53-25-119, AND
9 53-25-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
10 DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 53-25-102, MCA, is amended to read:

15 **"53-25-102. Purpose.** (1) It is the intent of the legislature to ~~give Montana residents~~ provide access to
16 a program authorized by section 529A of the Internal Revenue Code, 26 U.S.C. 529A, to encourage and assist
17 individuals and families in saving private funds for the purpose of supporting individuals with disabilities to
18 maintain health, independence, and quality of life and to provide secure funding for disability-related expenses
19 on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided
20 through private insurance, federal and state medical and disability insurance, a beneficiary's employment, and
21 other sources.

22 (2) The legislature further intends that the department achieve this purpose by:

23 (a) creating the Montana achieving a better life experience program, which is a public-private partnership
24 using selected financial institutions to serve as depositories for individuals' savings accounts established pursuant
25 to this ~~act~~ chapter; or

26 (b) contracting with another state that has a program under section 529A of the Internal Revenue Code,
27 26 U.S.C. 529A, and that allows Montana residents to participate in the state's program."

28
29 **Section 2.** Section 53-25-103, MCA, is amended to read:

30 **"53-25-103. Definitions.** As used in this chapter, the following definitions apply:



1 (1) "Account" means an eligible participating account established under this chapter by or on behalf of
2 an eligible individual.

3 ~~(2) "Account owner" means the designated beneficiary of the account.~~

4 (2) "Agent" means one of the following persons acting on behalf of a designated beneficiary:

5 (a) a person acting under a power of attorney; or

6 (b) if no person holds a power of attorney, a parent or legal guardian of the designated beneficiary.

7 (3) "Annual contribution limit" means the limit established in section 529A(b)(2) of the Internal Revenue
8 Code, 26 U.S.C. 529A(b)(2).

9 (4) "Application" means a form executed by or on behalf of a prospective ~~account owner~~ designated
10 beneficiary to enter into a participating trust agreement and open an account. The application incorporates the
11 participating trust agreement by reference.

12 (5) "Committee" means the achieving a better life experience program oversight committee established
13 in 53-25-105.

14 (6) "Contribution" means a payment to an account for the benefit of a designated beneficiary.

15 (7) "Department" means the department of public health and human services provided for in 2-15-2201.

16 (8) "Designated beneficiary" means the eligible individual on whose behalf an account is established.

17 (9) "Disability certifications" means disability certifications as defined in section 529A(e)(2) of the Internal
18 Revenue Code, 26 U.S.C. 529A(e)(2).

19 (10) "Eligible individual" means an eligible individual as defined in section 529A(e)(1) of the Internal
20 Revenue Code, 26 U.S.C. 529A(e)(1).

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

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

26 (13) "Member of the family" means, with respect to a designated beneficiary, a member of the family of
27 the designated beneficiary as defined in section 529A(e)(4) of the Internal Revenue Code, 26 U.S.C. 529A(e)(4).

28 (14) "Nonqualified withdrawal" means a withdrawal from the account that is not:

29 (a) a qualified withdrawal;

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

- 1 (c) a rollover distribution or a change of designated beneficiary described in 53-25-111.
- 2 (15) "Participating trust agreement" means an agreement between ~~an account owner~~ a designated
3 beneficiary and the department or its designee that creates a trust interest in the trust and provides for
4 participation in the program.
- 5 (16) "Program" means the Montana achieving a better life experience program provided for in this ~~part~~
6 chapter and authorized under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.
- 7 (17) "Program administrator" means the person appointed or contracted by the department to administer
8 the daily operations of the program and provide marketing, recordkeeping, investment management, and other
9 services for the program.
- 10 (18) "Program manager" means a financial institution that acts ~~as an agent~~ on behalf of the trust as
11 provided in 53-25-112.
- 12 (19) "Qualified disability expenses" means qualified disability expenses as defined in section 529A(e)(5)
13 of the Internal Revenue Code, 26 U.S.C. 529A(e)(5).
- 14 (20) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses
15 of the designated beneficiary of the account. A qualified withdrawal may be made by the beneficiary, ~~by an agent~~
16 ~~of the beneficiary who has a power of attorney for the beneficiary, or by the beneficiary's legal guardian or the~~
17 beneficiary's agent.
- 18 (21) "Rollover distribution" means a transfer of funds made:
- 19 (a) from one account in another state's qualified program to an account for the benefit of the same
20 designated beneficiary or an eligible individual who is a family member of the former designated beneficiary; or
21 (b) from one account to another account for the benefit of an eligible individual who is a family member
22 of the former designated beneficiary.
- 23 (22) "Trust" means the achieving a better life experience savings trust as provided in 53-25-121.
- 24 (23) "Trustee" means the department in its capacity as trustee of the trust.
- 25 (24) "Trust interest" means ~~an account owner's~~ a designated beneficiary's interest in the trust created
26 by a participating trust agreement and held for the benefit of ~~a~~ the designated beneficiary."
27

28 **Section 3.** Section 53-25-104, MCA, is amended to read:

29 **"53-25-104. Program administration -- rulemaking.** (1) ~~If the department creates the~~ There is a
30 Montana achieving a better life experience program, it shall. The department shall ensure that the program meets

1 the requirements for an achieving a better life experience program under section 529A of the Internal Revenue
 2 Code, 26 U.S.C. 529A. The program administrator may request a private letter ruling from the internal revenue
 3 service or the United States secretary of health and human services and shall take any necessary steps to ensure
 4 that the program qualifies under federal law.

5 (2) The department may contract with an independent service provider as program administrator, in
 6 consultation with the committee. In considering potential independent service providers, the department shall
 7 consider each prospective provider's prior experience with disabled individuals and programs for disabled
 8 individuals, along with its other qualifications. If the department appoints one of its employees to act as program
 9 administrator, the department may contract with independent service providers to provide services including but
 10 not limited to establishing accounts, providing information about investment choices, meeting notice requirements,
 11 providing account statements, and other services typically utilized by investment and savings plans. The
 12 department may require participating financial institutions to pay the costs of the independent service provider.

13 (3) The department may implement the program by contracting with another state as provided under 26
 14 U.S.C. 529A(e)(7). ~~If the department creates the program, it~~ The department shall:

15 (a) establish by rule the terms and conditions of the program subject to the requirements of this chapter
 16 and section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

17 (b) as required under section 529A(d) of the Internal Revenue Code, 26 U.S.C. 529A(d), require the
 18 program administrator to submit:

19 (i) upon the establishment of each account, a notice to the United States secretary of the treasury
 20 containing the name and state of residence of the designated beneficiary and any other information the secretary
 21 may require; and

22 (ii) electronically on a monthly basis to the United States commissioner of social security, statements on
 23 the relevant distributions and account balances of all accounts in the state.

24 ~~(4) If the department creates the Montana achieving a better life experience program, the~~ The
 25 ~~department may contract with other states to allow the residents of those other states access to the program.~~

26 ~~(5) If the department contracts with another state to allow Montana residents access to the other state's~~
 27 ~~program, the department shall ensure that the state's program complies with the requirements of 26 U.S.C.~~
 28 ~~529A."~~

29

30 **Section 4.** Section 53-25-105, MCA, is amended to read:

1 **"53-25-105. Program oversight committee -- membership -- powers and duties.** (1) ~~If the~~
 2 ~~department creates the Montana achieving a better life experience program, there must be~~ The department shall
 3 establish a program oversight committee under the authority of the department.

4 (2) The committee must consist of five members as follows:

5 (a) the director of the department of public health and human services or the director's designee;

6 (b) the director of the department of administration or the director's designee; and

7 (c) three members of the general public, one of whom possesses knowledge, skill, and experience in
 8 accounting, risk management, or investment management or as an actuary, ~~and two~~ ONE of whom ~~have~~ HAS
 9 experience working on behalf of disabled individuals, AND ONE OF WHOM HAS A DISABILITY.

10 (3) (a) Except as provided in subsection (3)(b), the governor shall appoint the public members of the
 11 committee to staggered terms of 4 years. The members are not subject to senate confirmation.

12 (b) The governor shall make the initial appointment of the public members as follows:

13 (i) one person to serve a 2-year term;

14 (ii) one person to serve a 3-year term; and

15 (iii) one person to serve a 4-year term.

16 (4) The committee shall select a presiding officer and a vice presiding officer from among the
 17 committee's membership.

18 (5) A majority of the membership constitutes a quorum for the transaction of business. The committee
 19 shall meet at least once a year, with additional meetings called by the presiding officer.

20 (6) The committee:

21 (a) shall recommend financial institutions for approval by the department to act as the managers of
 22 accounts as provided in 53-25-112; and

23 (b) may submit proposed policies to the department to help implement and administer this ~~part~~ chapter.

24 (7) The committee is allocated to the department for administrative purposes only, as provided in
 25 2-15-121.

26 (8) Members of the committee must be compensated as provided in 2-15-124."
 27

28 **Section 5.** Section 53-25-109, MCA, is amended to read:

29 **"53-25-109. Program requirements -- application -- establishment of account -- contributions.** (1)

30 The program must be operated through use of accounts in the trust established by ~~account owners~~ designated

1 beneficiaries. Payments to the trust for participation in the program must be made by or on behalf of ~~account~~
 2 ~~owners~~ designated beneficiaries pursuant to participating trust agreements. A person who wishes to participate
 3 in the program and open an account into which funds will be deposited to pay the qualified disability expenses
 4 of a designated beneficiary shall:

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

6 (b) complete an application on a form prescribed by the department that includes:

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

8 ~~—— (ii) the name, address, and social security number of the account owner if the account owner is not the~~
 9 ~~contributor;~~

10 ~~(iii)~~(i) the name, address, and social security number of the designated beneficiary and the agent, if the
 11 agent is opening the account;

12 (ii) the government-issued identification of the person opening the account;

13 ~~(iv)~~(iii) the certification relating to no excess contributions adopted by the department;

14 ~~(v)~~(iv) the designation of the financial institution with which the funds in the account will be invested; and

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

16 (c) pay the one-time application fee established by the department;

17 (d) make the minimum contribution required by the department; and

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

19 ~~—— (2) The designated beneficiary of an account must be a resident of Montana or a resident of a state that~~
 20 ~~has entered into a contract with Montana to provide its residents access to the program.~~

21 ~~(3)~~(2) Each account must be maintained separately from each other account under the program.

22 ~~(4)~~(3) Separate records and accounting must be maintained for each account for each designated
 23 beneficiary.

24 ~~(5)~~(4) Contributions to an account are subject to the requirements of section 529A(b)(2) of the Internal
 25 Revenue Code, 26 U.S.C. 529A(b)(2), prohibiting noncash contributions and contributions in excess of the annual
 26 contribution limit.

27 ~~(6)~~(5) A contributor to, ~~account owner of,~~ or designated beneficiary or agent of an account may not direct
 28 the investment of any contributions to an account or the earnings generated by an account in violation of section
 29 529A of the Internal Revenue Code, 26 U.S.C. 529A, and may not pledge the interest of an account or use an
 30 interest in an account as security for a loan.

1 ~~(7)~~(6) The financial institution shall provide statements to ~~account owners~~ designated beneficiaries
 2 whose accounts are invested with the institution at least once each year within 31 days after the 12-month period
 3 to which they relate. Each statement must identify the contributions made during the preceding 12-month period,
 4 the total contributions made through the end of the period, the value of the account as of the end of the period,
 5 distributions made during the period, and any other matters that the department requires to be reported to the
 6 ~~account owner~~ designated beneficiary.

7 ~~(8)~~(7) Statements and information returns relating to accounts must be prepared and filed to the extent
 8 required by federal or state tax law or by administrative rule.

9 ~~(9)~~(8) Application fees provided for in subsection (1)(c) must be deposited in the state special revenue
 10 fund to the credit of the department for the administration of the achieving a better life experience program."
 11

12 **Section 6.** Section 53-25-110, MCA, is amended to read:

13 **"53-25-110. Qualified and nonqualified withdrawals -- rulemaking.** (1) ~~An account owner~~ A
 14 designated beneficiary or agent may withdraw all or part of the balance from an account under rules prescribed
 15 by the department. The rules must be used to help the department or program administrator to determine whether
 16 a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the department concludes
 17 that it is necessary for the department or program administrator to make that determination.

18 (2) Upon the death of ~~an account owner~~ a designated beneficiary, any amount remaining in the account
 19 must be distributed pursuant to section 529A(f) of the Internal Revenue Code, 26 U.S.C. 529A(f).

20 (3) ~~An account owner~~ A designated beneficiary or agent may request a nonqualified withdrawal at any
 21 time. Nonqualified withdrawals are subject to a federal additional tax pursuant to section 529A of the Internal
 22 Revenue Code, 26 U.S.C. 529A.

23 (4) If a distribution is made from an account to any person or for the benefit of any person during a
 24 calendar year, the distribution must be reported to the internal revenue service and to ~~the account owner~~ or the
 25 designated beneficiary or agent to the extent required by federal law."
 26

27 **Section 7.** Section 53-25-111, MCA, is amended to read:

28 **"53-25-111. Changes in designated beneficiary.** (1) ~~An account owner~~ A designated beneficiary or
 29 agent may change the designated beneficiary of an account to an individual who is a member of the family of the
 30 former designated beneficiary in accordance with procedures established by the department.

1 (2) If requested by ~~an account owner~~ a designated beneficiary or agent, all or a portion of an account
 2 may be transferred through a rollover distribution to another account for which the designated beneficiary is a
 3 member of the family of the designated beneficiary of the transferee account.

4 (3) Changes in designated beneficiaries and rollover distributions under this section are not permitted
 5 if the changes or rollover distributions would violate:

6 (a) the excess contributions provisions adopted by the department; or

7 (b) the investment choice provisions of 53-25-112."
 8

9 **Section 8.** Section 53-25-112, MCA, is amended to read:

10 **"53-25-112. Selection of financial institution as program manager -- contract -- termination.** (1)

11 The department shall implement the operation of the program through the use of one or more financial institutions
 12 to act as program manager. Under the program, a person may submit applications for enrollment in the program
 13 and participating trust agreements to a program manager and establish accounts in the trust at the location of
 14 or through the program manager. ~~An account owner may deposit money in an~~ Money may be deposited into an
 15 account in the trust by paying the money to a program manager, who shall accept the money as an agent for on
 16 behalf of the trust. Accounts may be invested in one or more investment products approved by the department.

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

20 (3) The committee shall recommend as program manager or program managers the financial institution
 21 or institutions from among bidding financial institutions that demonstrate the most advantageous combination,
 22 both to potential program participants and to this state, of:

23 (a) financial stability and integrity;

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

26 (c) the ability of the financial institution, directly or through a subcontract, to satisfy recordkeeping and
 27 reporting requirements;

28 (d) the financial institution's plan for promoting the program and the investment that it is willing to make
 29 to promote the program. The cost of promotional efforts may not be funded with fees imposed on ~~account owners~~
 30 designated beneficiaries or agents.

- 1 (e) the fees, if any, proposed to be charged to persons for maintaining accounts;
- 2 (f) the minimum initial deposit and minimum contributions that the financial institution will require and the
3 willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans
4 and other deposit plans; and
- 5 (g) any other benefits to this state or its residents contained in the proposal, including an account
6 opening fee payable to the department by the ~~account owner~~ designated beneficiary to cover operating expenses
7 of the program and any additional fee offered by the financial institution for statewide program marketing by the
8 department.
- 9 (4) The department shall consider the committee's recommendations and the factors provided in
10 subsection (3) when selecting program managers.
- 11 (5) The department shall enter into a contract with a financial institution to serve as program manager
12 or, pursuant to subsection (6), into contracts with more than one financial institution to serve as program
13 managers. Each contract must provide the terms and conditions by which the financial institution, ~~as an agent~~
14 acting on behalf of the trust, may assist in selling interests in the trust and the manner in which funds of an
15 account that are designated for investment with or through the financial institution will be invested.
- 16 (6) The department may select more than one financial institution to serve as program manager. The
17 department may select more than one kind of investment product to be offered through the program. Any decision
18 on the use of multiple financial institutions or multiple investment products must take into account:
- 19 (a) the requirements for qualifying as a qualified program under section 529A of the Internal Revenue
20 Code, 26 U.S.C. 529A;
- 21 (b) the differing needs of contributors regarding risk and potential return of investment instruments; and
22 (c) the administrative costs and burdens that may be imposed as the result of the decision.
- 23 (7) A program manager or its subcontractor shall:
- 24 (a) take action required to keep the program in compliance with its contract or the requirements of this
25 chapter to manage the program so that it is treated as a qualified program under section 529A of the Internal
26 Revenue Code, 26 U.S.C. 529A;
- 27 (b) keep adequate records of each account, keep each account segregated from each other account,
28 and provide the department with the information necessary to prepare statements;
- 29 (c) if there is more than one program manager, provide the department with the information necessary
30 to help the department determine compliance with rules adopted by the department and to comply with any state

1 or federal tax reporting requirements;

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

7 (e) hold account funds invested by or through the financial institution in the name of and for the benefit
8 of the trust and the ~~account owner~~ designated beneficiary; and

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

11 (8) A person may not circulate a description of the program, whether in writing or through the use of any
12 media, unless the department or its designee first approves the description.

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

15 (10) If the department determines not to renew the appointment of a financial institution as program
16 manager, the department may take action consistent with the interest of the program and the accounts and in
17 accordance with its duties as trustee of the trust. Except as provided in subsection (11), if a contract executed
18 between the department and a financial institution pursuant to this section is not renewed, at the end of the term
19 of the nonrenewed contract:

20 (a) accounts previously established through the efforts of the financial institution may not be terminated
21 by the trustee or department and additional contributions may be made to those accounts;

22 (b) the funds in new accounts established after the termination may not be invested by or through the
23 financial institution unless a new contract is executed;

24 (c) account funds invested by or through the financial institution must continue to be invested in the
25 financial products in which they were invested prior to the nonrenewal unless the ~~account owner~~ designated
26 beneficiary or agent selects a different investment product; and

27 (d) the continuing role of the financial institution must be governed by rules or policies established by
28 the department or a special contract and all services provided by the financial institution to accounts continue to
29 be subject to the control of the department as trustee of the trust with responsibility for all accounts in the
30 program.

1 (11) (a) The department may terminate a contract with a financial institution or prohibit the continued
 2 investment of funds by or through a financial institution under subsection (10) at any time for good cause on the
 3 recommendation of the committee. If a contract is terminated or an investment is prohibited pursuant to this
 4 subsection (11), the trustee shall take custody of account funds or assets held at that financial institution and shall
 5 seek to promptly reinvest the funds or assets by or through another financial institution that is selected as a
 6 program manager by the department and into the same investment products or into investment products selected
 7 by the department that are as similar as possible to the original investments.

8 (b) Prior to taking the actions described in subsection (11)(a), the department shall give ~~account owners~~
 9 designated beneficiaries and agents notice of the termination and a reasonable period of time, not to exceed 30
 10 days, to voluntarily terminate the account invested by or through the financial institution or to direct that the
 11 account be invested with or through another program manager.

12 (c) If the termination of a program manager causes an emergency that might lead to a loss of funds to
 13 any ~~account owner~~ designated beneficiary, the department or trustee may take whatever emergency action is
 14 necessary or appropriate to prevent the loss of funds invested pursuant to this chapter. After taking emergency
 15 action, the department shall provide notice and opportunity for action to ~~account owners~~ designated beneficiaries
 16 as provided in subsection (11)(b)."

17

18 **Section 9.** Section 53-25-113, MCA, is amended to read:

19 **"53-25-113. Limitations.** (1) This chapter may not be construed to:

20 ~~— (a) give a designated beneficiary any rights or legal interest with respect to an account unless the~~
 21 ~~designated beneficiary is the account owner; or~~

22 ~~— (b) establish state residency for a person merely because the person is a designated beneficiary.~~

23 (2) This chapter does not establish any obligation of this state or of an agency or instrumentality of this
 24 state to guarantee for the benefit of ~~an account owner, a contributor to an account, or a designated beneficiary,~~
 25 agent, or contributor:

26 (a) the return of any amounts contributed to an account;

27 (b) the rate of interest or other return on an account; or

28 (c) the payment of interest or other return on an account.

29 (3) Under rules adopted by the department, each contract, application, and offering or disclosure
 30 document, and any other type of document identified by the department that may be used in connection with a

1 contribution to an account, must clearly indicate that the account is not insured by the state and that the principal
2 deposited and any investment return are not guaranteed by the state."

3

4 **Section 10.** Section 53-25-117, MCA, is amended to read:

5 **"53-25-117. Deductions for contributions.** An individual who contributes to one or more accounts
6 established pursuant to this chapter in a tax year is entitled to reduce the individual's adjusted gross income, in
7 accordance with 15-30-2110(12), by the total amount of the contributions, but not more than \$3,000. ~~The~~
8 ~~contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's~~
9 ~~child or stepchild if the contributor's child or stepchild is a Montana resident,~~ if the individual is:

10 (a) the designated beneficiary;

11 (b) the spouse of the designated beneficiary; or

12 (c) a parent, grandparent, sibling, or child related to the designated beneficiary by blood, marriage, or
13 legal adoption."

14

15 **Section 11.** Section 53-25-118, MCA, is amended to read:

16 **"53-25-118. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at
17 a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that
18 reduced adjusted gross income under 15-30-2110(12).

19 (2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross
20 income, all withdrawals must be allocated between income and contributions in accordance with the principles
21 applicable under section 529A(c)(3) of the Internal Revenue Code, 26 U.S.C. 529A(c)(3). The portion of a
22 recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any,
23 that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that
24 reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be
25 treated as first derived from contributions that reduced adjusted gross income, to the extent of those contributions,
26 and then to contributions that did not reduce adjusted gross income.

27 (3) (a) The recapture tax imposed by this section is payable by the ~~owner~~ designated beneficiary of the
28 account from which the withdrawal or contribution was made. The tax liability must be reported on the designated
29 beneficiary's income tax return ~~of the account owner~~ and is payable with the income tax payment for the year of
30 the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The

1 ~~account owner~~ designated beneficiary is liable for the tax even if the ~~account owner~~ designated beneficiary is not
2 a Montana resident at the time of the withdrawal.

3 (b) The department of revenue may require withholding on recapturable withdrawals from an account
4 that was at one time owned by a Montana resident if the ~~account owner~~ designated beneficiary is not a Montana
5 resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an
6 account that was at one time owned by a Montana resident must be treated as if the account is owned by a
7 resident of Montana.

8 (4) For the purposes of this section, all contributions made to accounts by residents of Montana who are
9 eligible for the deduction allowed under 53-25-117 are presumed to have reduced the contributor's adjusted gross
10 income in the amount of the contribution, up to the maximum allowed by law, unless the contributor can
11 demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who
12 claim deductions for contributions shall report on their Montana income tax returns the amount of deductible
13 contributions made to accounts for each designated beneficiary and the social security number of each
14 designated beneficiary.

15 (5) The department of revenue shall use all means available for the administration and enforcement of
16 income tax laws in the administration and enforcement of this section.

17 (6) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
18 nonqualified withdrawal."

19

20 **Section 12.** Section 53-25-119, MCA, is amended to read:

21 **"53-25-119. Access to records.** Information that identifies the contributor, ~~account owner~~ agent, or
22 designated beneficiary of an account is exempt from the provisions of 2-6-1003 and any other provision of law
23 permitting the public inspection or copying of documents."
24

25 **Section 13.** Section 53-25-121, MCA, is amended to read:

26 **"53-25-121. Achieving a better life experience savings trust.** (1) ~~If the department creates the~~
27 ~~Montana achieving a better life experience program, there~~ There is an achieving a better life experience savings
28 trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of trust
29 interests, with each trust interest corresponding to an account. The assets of an account may not be commingled
30 with the assets of any other account. The assets and earnings of an account may not be used to satisfy the

1 obligations of any other account. Each account represents a trust interest in the trust and includes amounts
2 received by the program ~~from account owners~~ pursuant to the participating trust agreement and the interest and
3 investment income earned by the trust account.

4 (2) The assets of the trust consist of investments and earnings on investments of funds received by the
5 program as deposits to accounts and as amounts transferred to the trust from accounts established prior to
6 October 1, 2015.

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

11 (4) ~~An account owner~~ A designated beneficiary or agent may execute a participating trust agreement
12 and have funds that are held by financial institutions in accounts established prior to October 1, 2015, transferred
13 to the trust and to the transferor's account."

14

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

16

17 NEW SECTION. Section 15. Retroactive applicability. (1) ~~This~~ EXCEPT AS PROVIDED IN SUBSECTION
18 (2), [THIS act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31,
19 2018.

20 (2) [SECTION 4], AMENDING 53-25-105, DOES NOT IMPACT AN EXISTING PUBLIC MEMBER'S TERM ON THE
21 PROGRAM OVERSIGHT COMMITTEE.

22

- END -