

HOUSE BILL NO. 320

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO TAX-ADVANTAGED SAVINGS PLANS; PROVIDING AN EXEMPTION FROM CLAIMS OF CREDITORS FOR ASSETS HELD IN OR DISTRIBUTED FROM A FAMILY EDUCATION SAVINGS ACCOUNT OR AN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE)ACCOUNT; AMENDING SECTIONS 15-62-103 AND 53-25-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Exemption from claims of creditors. (1) Except as provided in subsection ~~(2)~~ (3), UP TO \$100,000 OF assets and earnings held in and distributions from the trust by or on behalf of an account owner, contributor, or designated beneficiary of a participating trust agreement are exempt from all claims of creditors of the account owner, contributor, or designated beneficiary.

(2) SUBSECTION (1) APPLIES TO ASSETS AND EARNINGS HELD IN AND DISTRIBUTIONS FROM A QUALIFIED TUITION PROGRAM ESTABLISHED AND MAINTAINED BY ANOTHER STATE AS PROVIDED BY SECTION 529(B)(1)(A)(II) OF THE INTERNAL REVENUE CODE, 26 U.S.C. 529(B)(1)(A)(II), IF THE OWNER, CONTRIBUTOR, OR DESIGNATED BENEFICIARY IS A MONTANA RESIDENT.

~~(2)~~(3) Assets, earnings, and distributions are not protected from claims if the contribution violates the Uniform Fraudulent Transfer Act provided for in Title 31, chapter 2, part 3, or 11 U.S.C. 548.

NEW SECTION. Section 2. Exemption from claims of creditors. (1) Except as provided in subsection ~~(2)~~ (3) and 26 U.S.C. 529A, UP TO \$100,000 assets and earnings held in and distributions from the trust by or on behalf of an account owner, contributor, or designated beneficiary of a participating trust agreement are exempt from all claims of creditors of the account owner, contributor, or designated beneficiary.

(2) SUBSECTION (1) APPLIES TO ASSETS AND EARNINGS HELD IN AND DISTRIBUTIONS FROM A QUALIFIED PROGRAM ESTABLISHED AS PROVIDED IN SECTION 529A OF THE INTERNAL REVENUE CODE, 26 U.S.C. 529A, AND MAINTAINED BY ANOTHER STATE IF THE OWNER, CONTRIBUTOR, OR DESIGNATED BENEFICIARY IS A MONTANA RESIDENT.

~~(2)~~(3) Assets, earnings, and distributions are not protected from claims if the contribution violates the



1 Uniform Fraudulent Transfer Act provided for in Title 31, chapter 2, part 3, or 11 U.S.C. 548.

2

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

4 **"15-62-103. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

11 (4) "Committee" means the family education savings program oversight committee established in
12 20-25-901.

13 (5) "Contributor" means a person who makes a contribution to an account for the benefit of a designated
14 beneficiary.

15 ~~(5)(6)~~ "Designated beneficiary" means, with respect to an account, the person designated at the time
16 that the account is opened as the person whose higher education expenses are expected to be paid from the
17 account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated
18 beneficiary.

19 ~~(6)(7)~~ "Financial institution" means any bank, commercial bank, national bank, savings bank, savings
20 and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity
21 that is authorized to do business in this state.

22 ~~(7)(8)~~ "Higher education institution" means an eligible educational institution as defined in section
23 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

24 ~~(8)(9)~~ "Investment products" means, without limitation, certificates of deposit, savings accounts paying
25 fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

26 ~~(9)(10)~~ "Member of the family" means, with respect to a designated beneficiary, a member of the family
27 of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

28 ~~(10)(11)~~ "Nonqualified withdrawal" means a withdrawal from an account that is not:

29 (a) a qualified withdrawal;

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

1 (c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in
2 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
3 received by the designated beneficiary; or

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

5 ~~(11)~~(12) "Participating trust agreement" means an agreement between the board, as trustee and as
6 administrator of the program, and the account owner that creates a trust interest in the trust and provides for
7 participation in the program.

8 ~~(12)~~(13) "Program" means the family education savings program established pursuant to 15-62-201. The
9 program must be structured to permit the long-term accumulation of savings that can be used to finance all or
10 a share of the costs of higher education.

11 ~~(13)~~(14) "Qualified higher education expenses" means qualified higher education expenses as defined
12 in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

13 ~~(14)~~(15) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education
14 expenses of the designated beneficiary of the account.

15 ~~(15)~~(16) "Trust" means the family education savings trust established by 15-62-301.

16 ~~(16)~~(17) "Trustee" means the board in its capacity as trustee of the trust.

17 ~~(17)~~(18) "Trust interest" means an account owner's interest in the trust created by a participating trust
18 agreement and held for the benefit of a designated beneficiary."

19

20 **Section 4.** Section 53-25-103, MCA, is amended to read:

21 **"53-25-103. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

27 (4) "Application" means a form executed by or on behalf of a prospective account owner to enter into
28 a participating trust agreement and open an account. The application incorporates the participating trust
29 agreement by reference.

30 (5) "Committee" means the achieving a better life experience program oversight committee established

1 in 53-25-105.

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

3 (7) "Contributor" means a person who makes a contribution to an account for the benefit of a designated
4 beneficiary.

5 ~~(7)~~(8) "Department" means the department of public health and human services provided for in
6 2-15-2201.

7 ~~(8)~~(9) "Designated beneficiary" means the eligible individual on whose behalf an account is established.

8 ~~(9)~~(10) "Disability certifications" means disability certifications as defined in section 529A(e)(2) of the
9 Internal Revenue Code, 26 U.S.C. 529A(e)(2).

10 ~~(10)~~(11) "Eligible individual" means an eligible individual as defined in section 529A(e)(1) of the Internal
11 Revenue Code, 26 U.S.C. 529A(e)(1).

12 ~~(11)~~(12) "Financial institution" means a bank, commercial bank, national bank, savings bank, savings and
13 loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that
14 is authorized to do business in this state.

15 ~~(12)~~(13) "Investment products" means, without limitation, certificates of deposit, savings accounts paying
16 fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

17 ~~(13)~~(14) "Member of the family" means, with respect to a designated beneficiary, a member of the family
18 of the designated beneficiary as defined in section 529A(e)(4) of the Internal Revenue Code, 26 U.S.C.
19 529A(e)(4).

20 ~~(14)~~(15) "Nonqualified withdrawal" means a withdrawal from the account that is not:

21 (a) a qualified withdrawal;

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

23 (c) a rollover distribution or a change of designated beneficiary described in 53-25-111.

24 ~~(15)~~(16) "Participating trust agreement" means an agreement between an account owner and the
25 department or its designee that creates a trust interest in the trust and provides for participation in the program.

26 ~~(16)~~(17) "Program" means the Montana achieving a better life experience program provided for in this
27 part and authorized under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

28 ~~(17)~~(18) "Program administrator" means the person appointed or contracted by the department to
29 administer the daily operations of the program and provide marketing, recordkeeping, investment management,
30 and other services for the program.

