

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), 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) 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) and 26 U.S.C. 529A, 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) 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.

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 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

1 the account is disbursed to or for the benefit of the designated beneficiary.

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

4 (4) "Committee" means the family education savings program oversight committee established in
5 20-25-901.

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

8 ~~(5)(6)~~ "Designated beneficiary" means, with respect to an account, the person designated at the time
9 that the account is opened as the person whose higher education expenses are expected to be paid from the
10 account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated
11 beneficiary.

12 ~~(6)(7)~~ "Financial institution" means any bank, commercial bank, national bank, savings bank, savings
13 and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity
14 that is authorized to do business in this state.

15 ~~(7)(8)~~ "Higher education institution" means an eligible educational institution as defined in section
16 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

17 ~~(8)(9)~~ "Investment products" means, without limitation, certificates of deposit, savings accounts paying
18 fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

19 ~~(9)(10)~~ "Member of the family" means, with respect to a designated beneficiary, a member of the family
20 of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

21 ~~(10)(11)~~ "Nonqualified withdrawal" means a withdrawal from an account that is not:

22 (a) a qualified withdrawal;

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

24 (c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in
25 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
26 received by the designated beneficiary; or

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

28 ~~(11)(12)~~ "Participating trust agreement" means an agreement between the board, as trustee and as
29 administrator of the program, and the account owner that creates a trust interest in the trust and provides for
30 participation in the program.

1 ~~(12)~~(13) "Program" means the family education savings program established pursuant to 15-62-201. The
2 program must be structured to permit the long-term accumulation of savings that can be used to finance all or
3 a share of the costs of higher education.

4 ~~(13)~~(14) "Qualified higher education expenses" means qualified higher education expenses as defined
5 in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

6 ~~(14)~~(15) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education
7 expenses of the designated beneficiary of the account.

8 ~~(15)~~(16) "Trust" means the family education savings trust established by 15-62-301.

9 ~~(16)~~(17) "Trustee" means the board in its capacity as trustee of the trust.

10 ~~(17)~~(18) "Trust interest" means an account owner's interest in the trust created by a participating trust
11 agreement and held for the benefit of a designated beneficiary."

12

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

14 **"53-25-103. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

28 ~~(7)~~(8) "Department" means the department of public health and human services provided for in
29 2-15-2201.

30 ~~(8)~~(9) "Designated beneficiary" means the eligible individual on whose behalf an account is established.

1 ~~(9)~~(10) "Disability certifications" means disability certifications as defined in section 529A(e)(2) of the
2 Internal Revenue Code, 26 U.S.C. 529A(e)(2).

3 ~~(10)~~(11) "Eligible individual" means an eligible individual as defined in section 529A(e)(1) of the Internal
4 Revenue Code, 26 U.S.C. 529A(e)(1).

5 ~~(11)~~(12) "Financial institution" means a bank, commercial bank, national bank, savings bank, savings and
6 loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that
7 is authorized to do business in this state.

8 ~~(12)~~(13) "Investment products" means, without limitation, certificates of deposit, savings accounts paying
9 fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

10 ~~(13)~~(14) "Member of the family" means, with respect to a designated beneficiary, a member of the family
11 of the designated beneficiary as defined in section 529A(e)(4) of the Internal Revenue Code, 26 U.S.C.
12 529A(e)(4).

13 ~~(14)~~(15) "Nonqualified withdrawal" means a withdrawal from the account that is not:

14 (a) a qualified withdrawal;

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

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

17 ~~(15)~~(16) "Participating trust agreement" means an agreement between an account owner and the
18 department or its designee that creates a trust interest in the trust and provides for participation in the program.

19 ~~(16)~~(17) "Program" means the Montana achieving a better life experience program provided for in this
20 part and authorized under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

21 ~~(17)~~(18) "Program administrator" means the person appointed or contracted by the department to
22 administer the daily operations of the program and provide marketing, recordkeeping, investment management,
23 and other services for the program.

24 ~~(18)~~(19) "Program manager" means a financial institution that acts as an agent of the trust as provided
25 in 53-25-112.

26 ~~(19)~~(20) "Qualified disability expenses" means qualified disability expenses as defined in section
27 529A(e)(5) of the Internal Revenue Code, 26 U.S.C. 529A(e)(5).

28 ~~(20)~~(21) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability
29 expenses of the beneficiary of the account. A qualified withdrawal may be made by the beneficiary, by an agent
30 of the beneficiary who has a power of attorney for the beneficiary, or by the beneficiary's legal guardian.

1 ~~(21)~~(22) "Rollover distribution" means a transfer of funds made:

2 (a) from one account in another state's qualified program to an account for the benefit of the same
3 designated beneficiary or an eligible individual who is a family member of the former designated beneficiary; or

4 (b) from one account to another account for the benefit of an eligible individual who is a family member
5 of the former designated beneficiary.

6 ~~(22)~~(23) "Trust" means the achieving a better life experience savings trust as provided in 53-25-121.

7 ~~(23)~~(24) "Trustee" means the department in its capacity as trustee of the trust.

8 ~~(24)~~(25) "Trust interest" means an account owner's interest in the trust created by a participating trust
9 agreement and held for the benefit of a designated beneficiary."

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11 NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an
12 integral part of Title 15, chapter 62, part 2, and the provisions of Title 15, chapter 62, part 2, apply to [section 1].

13 (2) [Section 2] is intended to be codified as an integral part of Title 53, chapter 25, part 1, and the
14 provisions of Title 53, chapter 25, part 1, apply to [section 2].

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16 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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