



AN ACT GENERALLY REVISING THE FAMILY EDUCATION SAVINGS ACT; REVISING QUALIFYING EXPENDITURES TO INCLUDE ANY EXPENSES PERMITTED UNDER SECTION 529 OF THE INTERNAL REVENUE CODE; REVISING PROGRAM REQUIREMENTS; REVISING THE DUTIES OF THE BOARD OF REGENTS IN ADMINISTERING THE FAMILY EDUCATION SAVINGS PROGRAM; REVISING DEFINITIONS; AMENDING SECTIONS 15-30-2110, 15-62-102, 15-62-103, 15-62-201, 15-62-202, 15-62-203, 15-62-206, 15-62-208, 15-62-301, AND 20-25-902, MCA; REPEALING SECTION 15-62-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-30-2110, MCA, is amended to read:

"15-30-2110. Adjusted gross income. (1) Subject to subsection (15), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (16);

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (17), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (17), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

- (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;
- (g) all benefits received under the workers' compensation laws;
- (h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;
- (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- (j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);
- (k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;
- (l) contributions or earnings withdrawn from ~~a family education savings an~~ an account established under the Montana family education savings program, Title 15, chapter 62, or 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), or 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), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;
- (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;
- (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and

ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163;

(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104; and

(t) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership

or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.

The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program ~~or to 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),~~ or to 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), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another

state may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year pursuant to Title 20, chapter 4, part 5, not to exceed \$5,000, from the taxpayer's adjusted gross income.

(15) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are

determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(16) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(17) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(s) terminates December 31, 2023--sec. 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)"

Section 2. Section 15-62-102, MCA, is amended to read:

"15-62-102. Purpose Family education savings program established -- legislative intent -- purpose. (1) There is a family education savings program administered by the board of regents of higher education. The program may consist of one or more qualified tuition programs at the discretion of the board.

(2) It is the intent of the legislature to establish the Family Education Savings Act in recognition that the general welfare and well-being of the state of Montana are directly related to the educational levels and skills of its citizens. A vital and valid public purpose of the state of Montana is served by the establishment and implementation of a program that will encourage and make possible the attainment of an accessible, affordable postsecondary education by the greatest number of citizens through a savings program.

~~(2) The legislature further intends that the board achieve this purpose most effectively through a public-private partnership using selected financial institutions to serve as depositories for individuals'~~

~~postsecondary education savings accounts."~~

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~~ participation 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~~ establishes an account on behalf of a 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) "Contributor" means a person who makes a contribution to an account for the benefit of a designated beneficiary.
- (6) "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.
- (7) "Education expense" means expenses for tuition, fees, books, supplies, equipment required for an education program, principal or interest on any qualified education loan, and any other typical education expense associated with an education program up the maximum amount allowable under section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended.
- ~~(7)~~(8) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment ~~adviser~~ company, or other similar entity that is authorized to do business in this state.
- ~~(8)~~(9) "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).

~~(9)(10)~~— "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.

~~(10)(11)~~ "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)~~.

~~(11)(12)~~ "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.

~~(12)(13)~~ "~~Participating trust~~ Participation agreement" means an agreement between the board, 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.

~~(13)(14)~~ "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.

~~(14)(15)~~ "Qualified ~~higher~~ education expenses" means ~~qualified higher education expenses as defined in any education expense permitted by section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).~~

~~(15)~~ "Qualified tuition program" means a qualified tuition program as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529.

~~(15)(17)~~ "Qualified withdrawal" means a withdrawal from an account to pay the qualified ~~higher~~ education expenses of the designated beneficiary of the account.

~~(16)(18)~~ "Trust" means the family education savings trust established by 15-62-301.

~~(17)(19)~~ "Trust interest" means an account owner's interest in the trust created by a participation agreement and held for the benefit of a designated beneficiary."~~Trustee~~ means the board in its capacity as

trustee of the trust.

~~(18)(20)~~ "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. "Trustee" means the board in its capacity as trustee of the trust."

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 established in the form determined by the board and may be divided into multiple investment portfolios.

(2) If the program is divided into multiple portfolios as provided in subsection (1), the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular portfolio must be enforceable against the assets of that portfolio only and not against the assets of the program generally, if:

(a) distinct records are maintained for each portfolio; and

(b) the assets associated with each portfolio are accounted for separately from the other assets of the program.

~~(4)(3)~~ The program must be operated through use of accounts in the trust established by account owners. ~~Payments~~ Contributions to the trust for participation in the program must be made by account owners pursuant to ~~participating trust participation~~ participation agreements and may be made only in cash or a cash equivalent. A person who wishes to ~~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 in the program~~ shall:

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

~~(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~~
- (vi) ~~any other information required by the board;~~
- (c) ~~pay the one-time application fee established by the board;~~
- (d)(b) ~~make the minimum contribution required by the board or by opening an account; and~~
- (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)(4) Separate records and accounting must be maintained for each account for each designated beneficiary.~~

~~(10)(5) 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)(6) 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.~~

~~(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.

(7) At least annually, the board shall issue to each account holder a statement that provides a separate accounting for each qualified designated beneficiary with respect to each account providing:

- (a) the beginning balance;
- (b) contributions to the account;
- (c) withdrawals from the account during the previous year; and
- (d) ending investment account value.

~~(13)~~(8) 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.

~~(14)~~(9) 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 15-62-202, MCA, is amended to read:

"15-62-202. Changes in designated beneficiary. (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(2) If requested by an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

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

- (a) the excess contributions provisions adopted by the board pursuant to 20-25-902; or
- (b) the investment choice provisions of 15-62-201~~(4)~~(5)."

Section 6. 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~~ and may contract with one or more financial institutions to act as the program manager to provide management services to the program, including but not limited to investment management, account administration, customer service, and marketing services.

~~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~~ may solicit proposals from financial institutions to act as program 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-quality 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)~~(c) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;
- ~~(e)~~(d) if applicable, the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;
- ~~(f)~~(e) the fees, if any, proposed to be charged to persons for maintaining accounts;
- ~~(g)~~(f) the minimum initial deposit-contribution and minimum contributions ~~that the financial institution~~

~~will require and the willingness of the financial institution or its subcontractors to maintain accounts in the program and the ability to accept contributions through payroll deduction plans and other deposit-contribution plans; and~~

~~(h)(g) 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)(4) 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(44)(6) through (43)(8) 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(44)(6) through (43)(8) 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~~ policies 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 ~~participating trusts~~ money 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~~ prepare and file any federal or tax filing requirements relating to the program and assist the trustee with respect to any other obligations of the trustee.

~~(7)(5)~~ (5) 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)(6)~~ (6) 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. Except as provided in subsection ~~(40)~~ (7), 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) amounts held in accounts previously established ~~through the efforts of the financial institution may not be terminated by the trustee or board and additional contributions may be made to those accounts~~ during the term of the contract must remain assets of the trust;

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

~~(c)~~ ~~participating trusts invested by or through the 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)(c)~~ 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.

~~(4)(7)~~ (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)(6)~~ 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 trustee ~~shall take custody of account funds or assets held at that financial institution and shall seek to promptly reinvest the funds or program assets directly in its capacity as trustee of the trust or 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.

~~(e)(b)~~ 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 7. Section 15-62-206, MCA, is amended to read:

"15-62-206. Limitations. (1) This chapter may not be construed to:

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

(b) guarantee that a designated beneficiary will be admitted to a higher education institution or an elementary or secondary school or be allowed to continue enrollment at or graduate from a higher education institution or an elementary or secondary school located in this state after admission;

(c) establish state residency for a person merely because the person is a designated beneficiary; or

(d) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher-education expenses of a designated beneficiary.

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

- (a) the return of any amounts contributed to an account;
- (b) the rate of interest or other return on any account; or
- (c) the payment of interest or other return on any account.

(3) Under ~~rules~~ policies adopted by the board, each contract, application, offering or disclosure document, and any other type of document identified by the board that may be used in connection with a contribution to an account must clearly indicate that the account is not insured by the state and that the principal deposited or the investment return is not guaranteed by the state."

Section 8. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-2110(11).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(e)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(e)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if

the account owner is not a Montana resident at the time of the withdrawal.

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

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is ~~3 years~~ 1 year prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

Section 9. Section 15-62-301, MCA, is amended to read:

"15-62-301. 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~~ contributions to accounts and amounts transferred to the trust from accounts established prior to October 1, 2005, pursuant to subsection (3).

(3) In accordance with the instructions of the account owner, the trustee shall invest funds deposited in each participating trust contributed to each account 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 account for qualified withdrawals, nonqualified withdrawals, penalties, and withholdings.

~~(4) (a) After October 1, 2005, 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 October 1, 2005, 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 October 1, 2005, remain valid and are governed by this chapter as it read prior to October 1, 2005.~~

~~(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 October 1, 2005, 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."~~

Section 10. 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~~ administer, manage, promote, and market the program;

(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~~ administer the program in compliance with section 529 of the

Internal Revenue Code, 26 U.S.C. 529, as amended;

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

(e) if the board determines that contracting for program management will benefit the program, select the financial institution or institutions to act as the program manager pursuant to 15-62-203;

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

~~(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)(g) adopt policies for the establishment of a maximum total balance that may be held in accounts for a designated beneficiary and for providing adequate safeguards to prevent excess contributions in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;~~

~~(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;~~

~~(g)(h) adopt procedures as necessary to implement Title 15, chapter 62, including applications for participation in the program;~~

~~(h)(i) serve as trustee of the family education savings trust established in 15-62-301;~~

~~(i)(j) enter into participating trust participation agreements with account owners; and~~

~~(i)(k) 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."

Section 11. Repealer. The following section of the Montana Code Annotated is repealed:

15-62-302. Temporary savings account program.

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Applicability. [This act] applies to tax years beginning after December 31, 2020.

- END -

I hereby certify that the within bill,
HB 129, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 129

INTRODUCED BY D. BEDEY

AN ACT GENERALLY REVISING THE FAMILY EDUCATION SAVINGS ACT; LIMITING MONTANA TAX BENEFITS TO THE MONTANA FAMILY EDUCATION SAVINGS PROGRAM; REVISING QUALIFYING EXPENDITURES TO INCLUDE K-12 TUITION, CERTAIN ANY EXPENSES FOR REGISTERED APPRENTICESHIPS, AND REPAYING STUDENT LOANS PERMITTED UNDER SECTION 529 OF THE INTERNAL REVENUE CODE; REVISING PROGRAM REQUIREMENTS; REVISING THE DUTIES OF THE BOARD OF REGENTS IN ADMINISTERING THE FAMILY EDUCATION SAVINGS PROGRAM; REVISING DEFINITIONS; AMENDING SECTIONS 15-30-2110, 15-62-102, 15-62-103, 15-62-201, 15-62-202, 15-62-203, 15-62-206, 15-62-208, 15-62-301, AND 20-25-902, MCA; REPEALING SECTION 15-62-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.