

Amendment - 1st Reading-white - Requested by: Daniel Emrich - (S) Education and Cultural Resources

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

SB0390.001.002

1 SENATE BILL NO. 390
2 INTRODUCED BY D. EMRICH, J. WINDY BOY, S. KERNS, C. KNUDSEN, K. ZOLNIKOV, S. ESSMANN, B.
3 MITCHELL, P. FIELDER, S. VINTON, L. SHELDON-GALLOWAY, T. MOORE, L. BREWSTER, B. MERCER, J.
4 HINKLE, B. LER, A. REGIER, K. SEEKINS-CROWE, C. HINKLE, J. READ, M. HOPKINS, J. GILLETTE, G.
5 PARRY, M. YAKAWICH, T. MANZELLA, B. BROWN, J. FULLER, K. REGIER, B. MOLNAR, S. HINEBAUCH,
6 T. MCGILLVRAY, B. USHER, M. NOLAND, D. LENZ, D. BARTEL, G. HERTZ, C. FRIEDEL, B. GILLESPIE, C.
7 GLIMM, K. BOGNER, P. GREEN, T. FALK, D. ZOLNIKOV, J. ETCHART, R. MINER, J. TREBAS, B. PHALEN,
8 B. BEARD, L. DEMING, L. HELLEGAARD, T. SMITH, T. VERMEIRE, N. DURAM, R. KNUDSEN, N.

9 HASTINGS
10
11 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EQUALITY OF EDUCATIONAL
12 OPPORTUNITY ACT AND THE MONTANA EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION
13 SAVINGS ACCOUNT PROGRAM; PROVIDING LEGISLATIVE FINDINGS AND PURPOSES; PROVIDING
14 DEFINITIONS; ESTABLISHING REQUIREMENTS FOR ELIGIBILITY AND ALLOWABLE EXPENSES;
15 PROVIDING RESPONSIBILITIES FOR PARENTS, SCHOOL DISTRICTS, AND THE SUPERINTENDENT OF
16 PUBLIC INSTRUCTION; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE AUTONOMY OF
17 NONPUBLIC SCHOOLS ~~AND HOME SCHOOLS~~ UNDER THE ACT; PROVIDING FOR FUNDING OF
18 EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS ACCOUNTS; ESTABLISHING THE
19 EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS TRUST; AMENDING SECTION 20-5-
20 102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23

24 NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Equality of
25 Educational Opportunity Act".
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27 NEW SECTION. Section 2. Montana equality of educational opportunity education savings



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1 **account program -- findings and purposes.** (1) There is a Montana equality of educational opportunity
2 education savings account program provided by the legislature as a desirable educational program pursuant to
3 Article X, section 1(3), of the Montana constitution, which gives authority to the legislature to provide for
4 educational programs and institutions in addition to a basic system of public schools that will fulfill the goal of
5 the people to have an overall system of education that offers equal opportunity to each person in the state to
6 reach each person's full educational potential.

7 (2) The legislature finds that expanding educational opportunities and empowering parental choice
8 within the state is a valid public purpose to ensure equal educational opportunity for all children.

9 (3) The purposes of [sections 1 through 10] pursuant to Article X, section 1(1), of the Montana
10 constitution are to ensure that Montana children have access to educational opportunities that will develop each
11 child's full educational potential.

12
13 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], the following definitions
14 apply:

15 (1) "Eligible postsecondary institution" means an accredited postsecondary institution located in
16 the state.

17 (2) "ESA student amount" means the sum of:

18 (a) the data-for-achievement payment rate under 20-9-306;

19 (b) the Indian education for all payment rate under 20-9-306;

20 (c) 140% of the per-ANB amounts of the special education instructional block grant and the special
21 education-related services block grant under 20-9-321; and

22 (d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the
23 ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest
24 one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under
25 the program.

26 (3) "Montana equality of educational opportunity education savings account" or "account" means
27 an account within the trust established in [section 10] in which a payment under [section 9] is deposited on

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1 behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational
2 resources pursuant to [section 4] for qualified students.

3 (4) "Parent" means a biological parent, adoptive parent, legal guardian, custodian, or other person
4 with legal authority to act on behalf of a qualified student and whose parental rights have not been terminated.

5 (5) "Program" means the Montana equality of educational opportunity education savings account
6 program established in [section 2].

7 (6) "Qualified school" means a nonpublic school ~~or home school~~ serving any combination of
8 grades kindergarten through 12 that meets the requirements for Montana nonpublic schools under 20-5-109.

9 (7) "Qualified student" means a resident of the state who in the current school year is between the
10 ages of 5 and 19 on September 10 and who is not currently enrolled in a public school.

11 (8) "Resident school district" means the school district in which a student resides.

12

13 NEW SECTION. **Section 4. Use of Montana equality of educational opportunity education**

14 **savings account -- allowable educational resources.** (1) Money deposited in a Montana equality of
15 educational opportunity education savings account may be used for any of the following on behalf of the
16 participating qualified student:

17 (a) qualified school tuition, fees, textbooks, software, or other instructional materials or services;

18 (b) an educational program or course using electronic or offsite delivery methods, including but not
19 limited to tutoring, distance learning programs, online programs, and technology delivered learning programs;

20 (c) curriculum, including supplemental materials necessary for or in addition to the curriculum;

21 (d) tutoring;

22 (e) educational therapies or services, including but not limited to occupational, behavioral,
23 physical, speech-language, and audiology therapies from licensed or certified practitioners or providers,
24 including licensed or certified paraprofessionals or educational aides;

25 (f) state or nationally recognized assessment tests, advanced placement exams, entrance
26 examinations at an eligible postsecondary institution, or other assessment instruments;

27 (g) services provided by a public school in the state, including individual classes and

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1 the student remains otherwise eligible for inclusion and participates in the program. No other school district may
2 count the student for ANB purposes. The participating student is not considered to be enrolled in the resident
3 school district.

4 (6) The superintendent of public instruction shall administer the individual student accounts
5 pursuant to subsection (4)(a) so that:

6 (a) parents have the freedom to expend account funds for the purchase of allowable educational
7 resources for a participating student pursuant to [section 4]; and

8 (b) on a student's 24th birthday, the student's account is closed and any remaining funds in the
9 student's account are returned to the guarantee account described in 20-9-622. If a student is enrolled in a
10 postsecondary institution on the student's 24th birthday, the account must remain active until the student is no
11 longer enrolled in a postsecondary institution.

12 (7) The superintendent of public instruction may contract with private financial management firms
13 to manage the individual student accounts pursuant to subsection (4)(a) with the supervision of the
14 superintendent.

15 (8) There is an office of public instruction equality of educational opportunity ESA administration
16 account within the state special revenue fund created in 17-2-102 consisting of 2% of the money remitted to the
17 office of public instruction pursuant to subsection (2).

18
19 **NEW SECTION. Section 10. Equality of educational opportunity education savings trust.** There
20 is an equality of educational opportunity education savings trust that is an instrumentality of the state and that is
21 created for a public purpose. The trust consists of participating trusts with each participating trust corresponding
22 to an account. The assets of one participating trust may not be commingled with the assets of any other
23 participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations
24 of any other participating trust. Each participating trust account represents a trust interest in the trust and
25 includes interest and investment income earned by the trust account.

26

27

Section 11. Section 20-5-102, MCA, is amended to read:

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1 **"20-5-102. Compulsory enrollment and excuses.** (1) Except as provided in subsection (2), any
2 parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older
3 prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program
4 prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:
5 (a) the child's 16th birthday; or
6 (b) the date of completion of the work of the 8th grade.
7 (2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of
8 the district within the first week of the school term or when the parent, guardian, or person establishes
9 residence in the district unless the child is any of the following:
10 (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
11 (b) provided with supervised correspondence study or supervised home study under the
12 transportation provisions of this title;
13 (c) excused from compulsory school attendance upon a determination by a district judge that
14 attendance is not in the best interest of the child;
15 (d) excused by the board of trustees upon a determination that attendance by a child who has
16 attained the age of 16 is not in the best interest of the child and the school; ~~or~~
17 (e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the
18 purposes of this subsection (2)(e), a home school is the instruction by a parent of the parent's child, stepchild,
19 or ward in the parent's residence and a nonpublic school includes a parochial, church, religious, or private
20 school.
21 (f) participating in the Montana equality of educational opportunity education savings account
22 program pursuant to [sections 1 through 10]."

23
24 NEW SECTION. Section 12. Transition. The legislature intends that this program be operational for
25 the 2023-2024 school year and that the office of public instruction promptly develop all necessary components
26 of the program to meet that intention.

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