

## HOUSE BILL NO. 539

INTRODUCED BY J. BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS OF THE FAMILY EDUCATION SAVINGS ACT; CHANGING TERMINOLOGY TO CONFORM TO CHANGES IN FEDERAL LAW; CLARIFYING THE DUTIES OF THE BOARD OF REGENTS AND THE PROGRAM MANAGER'S RESPONSIBILITIES RELATING TO NONQUALIFIED WITHDRAWALS; CLARIFYING THE PROCEDURES INVOLVING INVESTMENT PRODUCTS WHEN A PROGRAM MANAGER IS TERMINATED; DEFINING "INVESTMENT PRODUCTS"; AND AMENDING SECTIONS 15-30-604, 15-62-103, 15-62-201, 15-62-203, 15-62-206, 15-62-207, 20-25-901, AND 20-25-902, MCA."

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

**Section 1.** Section 15-30-604, MCA, is amended to read:

**"15-30-604. (Temporary) Montana farm and ranch risk management account -- creation -- administration.** (1) A Montana farm and ranch risk management account is a trust created or organized in the state for the exclusive benefit of the taxpayer. The account trustee must be a financial institution, other than an investment adviser, as defined in 15-62-103, supervised by the United States or by the state of Montana. The trust must be created by written instrument.

(2) The trustee may not accept any deposit for any tax year in excess of the amount allowed as a deduction under 15-30-603.

(3) The trustee shall report to the department if a portion of a deposit is distributed within 6 months of the date of deposit.

(4) The assets of the trust must consist entirely of cash or of obligations that have adequate stated interest and that pay the interest at least annually.

(5) All income of the trust must be distributed currently to the grantor.

(6) The assets of the trust may not be commingled with other property except in a common trust fund or common investment fund. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

**Section 2.** 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 trust account or savings account established under this chapter.

(2) "Account owner" means the person 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 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) "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.

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

(7) "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).

(8) "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.

~~(8)~~(9) "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).

~~(9)~~(10) "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.

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

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

~~(12)~~(13) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account."

**Section 3.** Section 15-62-201, MCA, is amended to read:

**"15-62-201. Program requirements -- application -- establishment of account -- qualified and nonqualified withdrawal -- penalties.** (1) A person who wishes to deposit money into an account to pay the qualified higher education expenses of a designated beneficiary shall:

(a) 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; and

(v) any other information required by the board;

(b) pay the one-time application fee established by the board;

(c) make the minimum contribution required by the board or by opening an account; and

(d) 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. ~~to enable~~ 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 a~~ the board determines that it is required to impose a penalty on nonqualified withdrawal is made from an account; 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 as a penalty 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 ~~amount~~ 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) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) 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 and may not pledge the interest of an account or use an interest in an account as security for a loan.

(11) If, pursuant to 15-62-203(10), the board terminates the authority of a financial institution to hold ~~accounts~~ serve as program manager and accounts held by or through the program manager must be moved from that financial institution to another financial institution, the board shall select the financial institution ~~and type of investment~~ to which ~~the balance of the account is~~ the accounts are to be moved. If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts unless the account owner is permitted under the applicable rules of the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified state tuition plan to select new investments for the account without violating rules prohibiting investment direction.

(12) 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.

(13) The financial institution shall provide statements to each account owner 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.

(14) 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.

(15) 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 4.** Section 15-62-203, MCA, is amended to read:

**"15-62-203. Selection of financial institution as ~~account depository and program manager~~ -- contract -- termination.** (1) The board shall implement the program through the use of one or more financial institutions to act as the ~~depository and program~~ manager. Under the program, a person may establish accounts at the location of the depository or through the program manager. Accounts may be invested in one or more investment products approved by the board.

(2) The committee shall solicit proposals from financial institutions to act as ~~the depositories and~~

managers of the program. Financial institutions that submit proposals shall describe the ~~financial instruments~~ investment products that ~~will be held in accounts~~ they propose to offer through the program.

(3) On the recommendation of the committee, the board shall select as program ~~depositories and~~ 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 of the investment ~~instruments~~ products being offered, taking into account any insurance provided with respect to these ~~instruments~~ products;

(c) the ability of the investment ~~instruments~~ products to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;

(f) the fees, if any, proposed to be charged to persons for maintaining accounts;

(g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(h) 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 ~~depositories and~~ program managers.

(5) The ~~committee board~~ may select more than one financial institution to serve as ~~depository and~~ program manager. The ~~committee board~~ may select more than one kind of investment ~~instrument~~ product to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment ~~instruments~~ 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) 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 ~~plan~~ 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(12) through (14) 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(12) through (14) 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 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 all accounts in trust for the benefit of this state and the account owner.

(7) 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) 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) accounts previously established ~~and held in investment instruments at the financial institution~~ may not be terminated;

(b) additional contributions may be made to the accounts in existence at the time of nonrenewal of a contract; ~~and~~

(c) new accounts may not be placed with that financial institution unless a new contract is executed; and

(d) except as provided in subsection (10), accounts under the supervision of the program manager must continue to be invested in the financial products in which they were invested prior to the nonrenewal.

(10) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment ~~instruments~~ products as similar as possible to the original investments."

**Section 5.** 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 be allowed to continue enrollment at or graduate from a higher education institution 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 adopted by the board, each contract, application, ~~deposit slip, or 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 6.** Section 15-62-207, MCA, is amended to read:

**"15-62-207. Deductions for contributions.** An individual who contributes to ~~an account~~ ONE OR MORE ACCOUNTS in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111(8), by the TOTAL amount of the ~~contribution~~ CONTRIBUTIONS, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child; ~~or the~~



contributor's stepchild if the contributor's child or stepchild is a Montana resident."

**Section 7.** Section 20-25-901, MCA, is amended to read:

**"20-25-901. Family education savings program oversight committee -- membership -- powers and duties.** (1) There is ~~created~~ a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms.

The members must include:

(a) the commissioner of insurance or the commissioner's designee;

(b) the state treasurer or the state treasurer's designee;

(c) the presiding officer of the board or the presiding officer's designee; and

(d) four members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

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

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

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the ~~depositories and~~ managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section."

**Section 8.** 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;

(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 section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

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

(e) select the financial institution or institutions to act as the ~~depository and~~ manager of the program pursuant to 15-62-203;

(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) the establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(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; and

(g) adopt procedures as necessary to implement Title 15, chapter 62.

(2) The definitions in 15-62-103 apply to this section."

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