



AN ACT AUTHORIZING THE CREATION OF THE MONTANA ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM; REQUIRING THAT THE PROGRAM COMPLY WITH FEDERAL LAW AUTHORIZING THE PROGRAM; CREATING AN OVERSIGHT COMMITTEE; PROVIDING FOR TAX-EXEMPT SAVINGS ACCOUNTS FOR DISABILITY-RELATED EXPENSES; DESIGNATING QUALIFIED AND NONQUALIFIED WITHDRAWALS; ALLOWING A CHANGE IN BENEFICIARY; PROVIDING FOR SELECTION OF FINANCIAL INSTITUTIONS AND PROGRAM MANAGERS; ALLOWING A DEDUCTION FROM ADJUSTED GROSS INCOME FOR CERTAIN CONTRIBUTIONS TO AN ACCOUNT; PROVIDING FOR A RECAPTURE TAX FOR CERTAIN WITHDRAWALS OF DEDUCTIBLE CONTRIBUTIONS; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH ANOTHER STATE TO ALLOW MONTANA RESIDENTS ACCESS TO THE OTHER STATE'S 529A PROGRAM; PROVIDING THAT AN ACCOUNT MAY NOT BE COUNTED AS A RESOURCE FOR DETERMINING ELIGIBILITY FOR STATE ASSISTANCE PROGRAMS; CREATING AN ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS TRUST; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1. Short title.** This chapter may be cited as the "Montana Achieving a Better Life Experience Act".

**Section 2. Purpose.** (1) It is the intent of the legislature to give Montana residents access to a program authorized by section 529A of the Internal Revenue Code, 26 U.S.C. 529A, to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, federal and state medical and disability insurance, a beneficiary's employment, and other sources.

(2) The legislature further intends that the department achieve this purpose by:

(a) creating the Montana achieving a better life experience program, which is a public-private partnership using selected financial institutions to serve as depositories for individuals' savings accounts established pursuant to this act; or

(b) contracting with another state that has a program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A, and that allows Montana residents to participate in the state's program.

**Section 3. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

(5) "Committee" means the achieving a better life experience program oversight committee established in [section 5].

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

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

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

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

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

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

(12) "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.

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

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

- (a) a qualified withdrawal;
- (b) a withdrawal made as the result of the death of the designated beneficiary of an account; or
- (c) a rollover distribution or a change of designated beneficiary described in [section 8].

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

(16) "Program" means the Montana achieving a better life experience program provided for in [sections 1 through 15] and authorized under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

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

(18) "Program manager" means a financial institution that acts as an agent of the trust as provided in [section 9].

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

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

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

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

(22) "Trust" means the achieving a better life experience savings trust as provided in [section 15].

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

(24) "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.

**Section 4. Program administration -- rulemaking.** (1) If the department creates the Montana achieving a better life experience program, it shall ensure that the program meets the requirements for an achieving a better life experience program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A. The program administrator may request a private letter ruling from the internal revenue service or the United States secretary of health and human services and shall take any necessary steps to ensure that the program qualifies under federal law.

(2) The department may contract with an independent service provider as program administrator, in consultation with the committee. In considering potential independent service providers, the department shall consider each prospective provider's prior experience with disabled individuals and programs for disabled individuals, along with its other qualifications. If the department appoints one of its employees to act as program administrator, the department may contract with independent service providers to provide services including but not limited to establishing accounts, providing information about investment choices, meeting notice requirements, providing account statements, and other services typically utilized by investment and savings plans. The department may require participating financial institutions to pay the costs of the independent service provider.

(3) The department may implement the program by contracting with another state as provided under 26 U.S.C. 529A(e)(7). If the department creates the program, it shall:

(a) establish by rule the terms and conditions of the program subject to the requirements of this chapter and section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) as required under section 529A(d) of the Internal Revenue Code, 26 U.S.C. 529A(d), require the program administrator to submit:

(i) upon the establishment of each account, a notice to the United States secretary of the treasury containing the name and state of residence of the designated beneficiary and any other information the secretary may require; and

(ii) electronically on a monthly basis to the United States commissioner of social security, statements on the relevant distributions and account balances of all accounts in the state.

(4) If the department creates the Montana achieving a better life experience program, the department may contract with other states to allow the residents of those states access to the program.

(5) If the department contracts with another state to allow Montana residents access to the other state's program, the department shall ensure that the state's program complies with the requirements of 26 U.S.C. 529A.

**Section 5. Achieving a better life experience program oversight committee -- membership -- powers and duties.** (1) If the department creates the Montana achieving a better life experience program, there must be a program oversight committee under the authority of the department.

(2) The committee must consist of five members as follows:

- (a) the director of the department of public health and human services or the director's designee;
- (b) the director of the department of administration or the director's designee; and
- (c) three members of the general public, one of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary and two of whom have experience working on behalf of disabled individuals.

(3) (a) Except as provided in subsection (3)(b), the governor shall appoint the public members of the committee to staggered terms of 4 years. The members are not subject to senate confirmation.

(b) The governor shall make the initial appointment of the public members as follows:

- (i) one person to serve a 2-year term;
- (ii) one person to serve a 3-year term; and
- (iii) one person to serve a 4-year term.

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

(5) 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.

(6) The committee:

- (a) shall recommend financial institutions for approval by the department to act as the managers of accounts as provided in [section 9]; and
- (b) may submit proposed policies to the department to help implement and administer [sections 1 through 15].

(7) The committee is allocated to the department for administrative purposes only, as provided in 2-15-121.

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

**Section 6. Program requirements -- application -- establishment of account -- contributions. (1)**

The program must be operated through use of accounts in the trust established by account owners. Payments to the trust for participation in the program must be made by or on behalf of account owners pursuant to participating trust agreements. A person who wishes to participate in the program and open an account into which funds will be deposited to pay the qualified disability expenses of a designated beneficiary shall:

- (a) enter into a participating trust agreement pursuant to which an account of the trust will be established;
- (b) complete an application on a form prescribed by the department 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 department;
  - (v) the designation of the financial institution with which the funds in the account will be invested; and
  - (vi) any other information required by the department;
- (c) pay the one-time application fee established by the department;
- (d) make the minimum contribution required by the department; and
- (e) designate the type of account to be opened if more than one type of account is offered.

(2) The designated beneficiary of an account must be a resident of Montana or a resident of a state that has entered into a contract with Montana to provide its residents access to the program.

(3) Each account must be maintained separately from each other account under the program.

(4) Separate records and accounting must be maintained for each account for each designated beneficiary.

(5) Contributions to an account are subject to the requirements of section 529A(b)(2) of the Internal Revenue Code, 26 U.S.C. 529A(b)(2), prohibiting noncash contributions and contributions in excess of the annual contribution limit.

(6) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to an account or the earnings generated by an account in violation of section

529A of the Internal Revenue Code, 26 U.S.C. 529A, and may not pledge the interest of an account or use an interest in an account as security for a loan.

(7) The financial institution shall provide statements to account owners whose accounts are invested with the institution at least once each year within 31 days after the 12-month period to which they relate. Each statement must identify the contributions made during the preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of the period, distributions made during the period, and any other matters that the department requires to be reported to the account owner.

(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.

(9) Application fees provided for in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the department for the administration of the achieving a better life experience program.

**Section 7. Qualified and nonqualified withdrawals -- rulemaking.** (1) An account owner may withdraw all or part of the balance from an account under rules prescribed by the department. The rules must be used to help the department or program administrator to determine whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the department concludes that it is necessary for the department or program administrator to make that determination.

(2) Upon the death of an account owner, any amount remaining in the account must be distributed pursuant to section 529A(f) of the Internal Revenue Code, 26 U.S.C. 529A(f).

(3) An account owner may request a nonqualified withdrawal at any time. Nonqualified withdrawals are subject to a federal additional tax pursuant to section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

(4) If a distribution is made 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 to the account owner or the designated beneficiary to the extent required by federal law.

**Section 8. 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 department.

(2) If requested by an account owner, all or a portion of an account may be transferred through a rollover

distribution to another account for which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

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

- (a) the excess contributions provisions adopted by the department; or
- (b) the investment choice provisions of [section 9].

**Section 9. Selection of financial institution as program manager -- contract -- termination.** (1) The department shall implement the operation of the program through the use of one or more financial institutions to act as program manager. 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 department.

(2) The committee shall solicit proposals from financial institutions to act as program managers. Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program.

(3) The committee shall recommend as program manager or 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 of the investment products being offered, taking into account any insurance provided with respect to these products;
- (c) the ability of the financial institution, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;
- (d) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program. The cost of promotional efforts may not be funded with fees imposed on account owners.
- (e) the fees, if any, proposed to be charged to persons for maintaining accounts;
- (f) 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

(g) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the department by the account owner to cover operating expenses of the program and any additional fee offered by the financial institution for statewide program marketing by the department.

(4) The department shall consider the committee's recommendations and the factors provided in subsection (3) when selecting program managers.

(5) The department shall enter into a contract with a financial institution to serve as program manager or, pursuant to subsection (6), into contracts with more than one financial institution to serve as program managers. Each contract must provide the terms and conditions by which the financial institution, as an agent of the trust, may assist in selling interests in the trust and the manner in which funds of an account that are designated for investment with or through the financial institution will be invested.

(6) The department may select more than one financial institution to serve as program manager. The department 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 program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) the differing needs of contributors regarding risk and potential return of investment instruments; and

(c) the administrative costs and burdens that may be imposed as the result of the decision.

(7) 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 program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the department with the information necessary to prepare statements;

(c) if there is more than one program manager, provide the department with the information necessary to help the department determine compliance with rules adopted by the department and to comply with any state or federal tax reporting requirements;

(d) provide representatives of the department, 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 department, 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.

(e) hold account funds invested by or through the financial institution in the name of and for the benefit of the trust and the account owner; and

(f) assist the trustee with respect to any federal or tax filing requirements relating to the program and with respect to any other obligations of the trustee.

(8) A person may not circulate a description of the program, whether in writing or through the use of any media, unless the department or its designee first approves the description.

(9) A contract executed between the department and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(10) If the department determines not to renew the appointment of a financial institution as program manager, the department 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 (11), if a contract executed between the department 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 through the efforts of the financial institution may not be terminated by the trustee or department and additional contributions may be made to those accounts;

(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) account funds 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; and

(d) the continuing role of the financial institution must be governed by rules or policies established by the department or a special contract and all services provided by the financial institution to accounts continue to be subject to the control of the department as trustee of the trust with responsibility for all accounts in the program.

(11) (a) The department may terminate a contract with a financial institution or prohibit the continued

investment of funds by or through a financial institution under subsection (10) at any time for good cause on the recommendation of the committee. If a contract is terminated or an investment is prohibited pursuant to this subsection (11), the trustee shall take custody of account funds or assets held at that financial institution and shall seek to promptly reinvest the funds or assets by or through another financial institution that is selected as a program manager by the department and into the same investment products or into investment products selected by the department that are as similar as possible to the original investments.

(b) Prior to taking the actions described in subsection (11)(a), the department 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 direct that the account be invested with or through another program manager.

(c) If the termination of a program manager causes an emergency that might lead to a loss of funds to any account owner, the department 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 department shall provide notice and opportunity for action to account owners as provided in subsection (11)(b).

**Section 10. Limitations.** (1) This chapter may not be construed to:

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

(b) establish state residency for a person merely because the person is a designated beneficiary.

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

(a) the return of any amounts contributed to an account;

(b) the rate of interest or other return on an account; or

(c) the payment of interest or other return on an account.

(3) Under rules adopted by the department, each contract, application, and offering or disclosure document, and any other type of document identified by the department 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 and any investment return are not guaranteed by the state.

**Section 11. Deductions for contributions.** An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-2110(12), by the total amount of the 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 stepchild if the contributor's child or stepchild is a Montana resident.

**Section 12. 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(12).

(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 529A(c)(3) of the Internal Revenue Code, 26 U.S.C. 529A(c)(3). 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 those 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 of revenue 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) The department of revenue shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.

(6) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal.

**Section 13. Access to records.** Information that identifies the contributor, account owner, or designated beneficiary of an account is exempt from the provisions of 2-6-102 and 2-6-104 and any other provision of law permitting the public inspection or copying of documents.

**Section 14. Account not counted as resource.** Unless required by federal law or regulation, money in any account established pursuant to 26 U.S.C. 529A may not be counted as a resource in determining eligibility for an assistance program operated under Title 53 or any other federal, state, or local government means-tested program.

**Section 15. Achieving a better life experience savings trust.** (1) If the department creates the Montana achieving a better life experience program, there is an achieving a better life experience savings trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of trust interests, with each trust interest corresponding to an account. The assets of an account may not be commingled with the assets of any other account. The assets and earnings of an account may not be used to satisfy the obligations of any other account. Each 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 the 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 to accounts and as amounts transferred to the trust from accounts established prior to October 1, 2015.

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

(4) 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, 2015, transferred to the trust and to the transferor's account.

**Section 16.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection ~~(43)~~ (14), 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;

(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), for tax years commencing after December 31, 2002, 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), the first \$3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) 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 \$30,000 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 \$30,000 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, including premiums paid by the employer for an employee pursuant to 33-22-166;

(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, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(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 account 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) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

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

(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 taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions 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. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction 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), 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 as provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), 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 [section 12].

~~(12)~~(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(12)(a)(iv)~~ (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 ~~(12)(b)~~ (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(12)(a)~~ (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.

~~(13)~~(14) 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.

~~(14)~~(15) 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 that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest \$10. The resulting amounts are effective for that 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.)"

**Section 17. Transition.** The department of public health and human services shall take all steps necessary to implement the program to allow accounts to be opened and contributions to be made no later than November 1, 2015.

**Section 18. Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 15].

**Section 19. Effective date.** [This act] is effective on passage and approval.

**Section 20. Retroactive applicability.** [Sections 11, 12, and 16] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014.

- END -

I hereby certify that the within bill,  
SB 0399, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

SENATE BILL NO. 399

INTRODUCED BY F. THOMAS, M. CAFERRO, C. WOLKEN

AN ACT AUTHORIZING THE CREATION OF THE MONTANA ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM; REQUIRING THAT THE PROGRAM COMPLY WITH FEDERAL LAW AUTHORIZING THE PROGRAM; CREATING AN OVERSIGHT COMMITTEE; PROVIDING FOR TAX-EXEMPT SAVINGS ACCOUNTS FOR DISABILITY-RELATED EXPENSES; DESIGNATING QUALIFIED AND NONQUALIFIED WITHDRAWALS; ALLOWING A CHANGE IN BENEFICIARY; PROVIDING FOR SELECTION OF FINANCIAL INSTITUTIONS AND PROGRAM MANAGERS; ALLOWING A DEDUCTION FROM ADJUSTED GROSS INCOME FOR CERTAIN CONTRIBUTIONS TO AN ACCOUNT; PROVIDING FOR A RECAPTURE TAX FOR CERTAIN WITHDRAWALS OF DEDUCTIBLE CONTRIBUTIONS; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH ANOTHER STATE TO ALLOW MONTANA RESIDENTS ACCESS TO THE OTHER STATE'S 529A PROGRAM; PROVIDING THAT AN ACCOUNT MAY NOT BE COUNTED AS A RESOURCE FOR DETERMINING ELIGIBILITY FOR STATE ASSISTANCE PROGRAMS; CREATING AN ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS TRUST; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.