Montana Code Annotated
2005
MFESP Enabling Statute

Part 1: General Provisions

15-62-101. Short title. This chapter may be cited as the "Family Education Savings Act".
History: En. Sec. 1, Ch. 540, L. 1997.

15-62-102. Purpose. (1) 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.
History: En. Sec. 2, Ch. 540, L. 1997.

15-62-103. Definitions. As used in this chapter, the following definitions apply:
(1) "Account" means an individual participating trust account established under this chapter.
(2) "Account owner" means the person who enters into a participating trust agreement and who is designated at the time that an account is opened as having the right to withdraw money from the account before 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, 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.

(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).
(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.
(11) "Participating trust 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.
(12) "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.
(13) "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).
(14) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.
(15) "Trust" means the family education savings trust established by 15-62-301.
(16) "Trustee" means the board in its capacity as trustee of the trust.
(17) "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.
History: En. Sec. 3, Ch. 540, L. 1997; amd. Sec. 5, Ch. 468, L. 2001; amd. Sec. 2, Ch. 566, L. 2003; amd. Sec. 3, Ch. 549, L. 2005.

Part 2. Family Education Savings Program Account – Administration

15-62-201. Program requirements -- application -- establishment of account -- qualified and nonqualified withdrawal -- penalties. (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 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 higher education expenses of a designated beneficiary shall:
(a) enter into a participating trust agreement pursuant to which an account will be established as a participating trust of the trust;
(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) 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) 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 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) 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.
(13) 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) 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.
History: En. Sec. 4, Ch. 540, L. 1997; amd. Sec. 6, Ch. 468, L. 2001; amd. Sec. 3, Ch. 566, L. 2003; amd. Sec. 4, Ch. 549, L. 2005.

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(10).
History: En. Sec. 5, Ch. 540, L. 1997.

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 one or more financial institutions to act as the 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 board.
(2) The committee shall solicit proposals from financial institutions to act as 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 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) 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 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) 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(11) through (13) 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(11) through (13) 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 participating trusts 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 any federal or tax filing requirements relating to the program and with respect to any other obligations of the trustee.
(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 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 (10), 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 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;
(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) 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.
(10) (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) 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 assets 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.
(c) 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).
History: En. Sec. 8, Ch. 540, L. 1997; amd. Sec. 7, Ch. 468, L. 2001; amd. Sec. 4, Ch. 566, L. 2003; amd. Sec. 5, Ch. 549, L. 2005.

15-62-204. Repealed. Sec. 8, Ch. 468, L. 2001.
History: En. Sec. 9, Ch. 540, L. 1997; amd. Sec. 39, Ch. 51, L. 1999.

15-62-205. Scholarships and financial aid provisions -- exceptions. (1) Except as provided in subsection (2), a student loan program, student grant program, or other financial assistance program established or administered by the state or a financial assistance program administered by a state-supported college or university must treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets, or financial need.
(2) This section does not apply if:
(a) federal law requires all or a portion of the amount in an account to be taken into account in a different manner;
(b) federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner; or
(c) a specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.
History: En. Sec. 10, Ch. 540, L. 1997.

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, 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.
History: En. Sec. 11, Ch. 540, L. 1997; amd. Sec. 5, Ch. 566, L. 2003.

15-62-207. 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 15-30-111(8), 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.
History: En. Sec. 1, Ch. 468, L. 2001; amd. Sec. 6, Ch. 566, L. 2003.

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 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(8).
(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(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(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 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.
History: En. Sec. 2, Ch. 468, L. 2001.

15-62-209. Access to records. Information that identifies the contributor, account owner, or designated beneficiary of a family education savings 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. The provisions of this section may not prevent the release of information about a specific designated beneficiary to a higher education institution at which the designated beneficiary is enrolled or to which the designated beneficiary has applied for admission.
History: En. Sec. 3, Ch. 468, L. 2001.

Part 3. Family Education Savings Trust

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 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 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 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.
History: En. Sec. 1, Ch. 549, L. 2005.

15-62-302. Temporary savings account program. (1) If the board offers an investment product of certificates of deposit or bank savings accounts insured by the federal deposit insurance corporation, the board may provide for the holding of those investment products by a financial institution as trust accounts for the account owner without being part of the participating trust arrangement for the trust.
(2) Certificates of deposit and bank savings accounts not held as part of the trust are to be held as trust accounts under conditions set by the board based on, as applicable, conditions required for participating trust accounts under this chapter. The provisions of this chapter that apply to reporting, holding, management, and other administrative and tax consequences of a participating trust account of the family savings trust apply to trust accounts under this section.
(3) If trust accounts have been established under subsection (2) and the board determines that it would be in the best interest of the program for those accounts to become part of the family education savings trust, the board may merge the trust accounts established under subsection (2) into the trust. The board shall establish a transfer date. The board shall give at least 90 days' notice to owners of trust accounts established under subsection (2) of the intent to merge and a description of the options available to an account owner upon merger. Each owner of a trust account established under subsection (2) may execute a participating trust agreement and have the title to the owner's trust account that is held by a financial institution transferred to the trust and to a participating trust

corresponding to an account for the account owner. On the transfer date, all accounts not transferred by account owners must be transferred by the board to the trust and placed in participating trusts corresponding to accounts and each owner whose account has been transferred is considered to have consented to and be bound by the participating trust agreement and to the transfer of the account.
History: En. Sec. 2, Ch. 549, L. 2005.