

HOUSE BILL NO. 320

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BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING MONTANA'S ACADEMIC PROSPERITY PROGRAM FOR SCHOLARS; PROVIDING LEGISLATIVE FINDINGS, PURPOSES, AND INTENT; PROVIDING DEFINITIONS; ESTABLISHING THE MONTANA'S ACADEMIC PROSPERITY PROGRAM FOR SCHOLARS COUNCIL AND DUTIES FOR THE COUNCIL, THE DEPARTMENT OF ADMINISTRATION, THE DEPARTMENT OF REVENUE, AND THE OFFICE OF PUBLIC INSTRUCTION; ALLOWING EDUCATION TAX CREDITS FOR DONATIONS TO FUND EDUCATIONAL ASSISTANCE ACCOUNTS AND FOR A PARENT'S PAYMENT OF QUALIFIED EDUCATION EXPENSES; PROVIDING FOR A PROGRAM MANAGER TO IMPLEMENT THE PROGRAM; ESTABLISHING PROCEDURES FOR THE PROGRAM MANAGER AND A PROCESS FOR REVIEW OF THE PROGRAM MANAGER'S PERFORMANCE BY THE MONTANA'S ACADEMIC PROSPERITY PROGRAM FOR SCHOLARS COUNCIL; INCLUDING PARTICIPATION IN THE PROGRAM AS AN EXEMPTION TO COMPULSORY ENROLLMENT REQUIREMENTS; REQUIRING PUBLIC SCHOOLS TO TRANSFER STUDENT RECORDS; PROVIDING AUTONOMY FOR QUALIFIED EDUCATION PROVIDERS UNDER THE PROGRAM; ESTABLISHING PARAMETERS FOR LEGAL PROCEEDINGS RELATED TO THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-30-2120, 15-30-2303, 20-5-102, AND 20-5-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 17] may be cited as the "Montana's Academic Prosperity Program for Scholars Act".

NEW SECTION. **Section 2. Montana's academic prosperity program for scholars -- legislative**

1 of a parent to direct the upbringing and education of the parent's child and respect parental autonomy when the
2 parent chooses qualified education expenses to meet the child's individual instructional education needs.

3
4 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 17], unless the context
5 clearly indicates otherwise, the following definitions apply:

6 (1) "Annual educational assistance maximum" means the amount of money calculated by dividing
7 the statewide total of ~~BASE budgets direct state aid~~ for all school districts divided by the statewide ~~full-time~~
8 ~~enrollment, but not~~ ANB, on which the ~~BASE budgets are direct state aid is~~ based. The office of public
9 instruction shall determine this calculation for the current school fiscal year annually no later than October 1 and
10 provide the amount to the program manager. The calculation must apply to the ensuing tax year.

11 (2) "Corporation" has the meaning provided in 15-30-2101.

12 (3) "Department" means the department of administration provided for in 2-15-1001.

13 (4) "Donation" means a gift of cash or a cash equivalent made to the program manager for
14 educational assistance and administration of MAPPS.

15 (5) "Educational assistance" means money expended through MAPPS on qualified education
16 expenses not exceeding the annual educational assistance maximum on behalf of participating students either:

17 (a) paid from an educational assistance account; or

18 (b) purchased by a parent.

19 (6) "Educational assistance account" means a program manager's accounting of donations for
20 educational assistance awarded on behalf of a participating student with funds derived from the MAPPS
21 account.

22 (7) "Education tax credit" means a Montana income tax credit against the tax imposed by Title 15,
23 chapters 30 and 31, for:

24 (a) donations made to a program manager to support MAPPS; or

25 (b) qualified education expenses purchased by a parent for a participating student.

26 (8) (a) "Eligible student" means a resident of the state who:

27 (i) is 5 years of age or older on or before September 10 of the year the student participates in

28 MAPPS and who has not yet reached 19 years of age;

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(ii) is not ~~enrolled full-time as defined in~~ counted for more than one-quarter-time enrollment under 20-9-311(4) in the public school system, community choice schools, or public charter schools while participating in MAPPS;

(iii) is not receiving a scholarship from a student scholarship organization under Title 15, chapter 30, part 31; and

(iv) for eligibility for an educational assistance account, is from a household with an annual household income not exceeding ~~500%~~ 300% of the federal poverty level in the year prior to application.

(b) A student participating in the Montana special needs equal opportunity education savings account program pursuant to Title 20, chapter 7, part 17, ~~who meets the requirements of subsection (8)(a)~~ is not an eligible student.

(9) "MAPPS account" means a segregated account held by the program manager consisting of donations collected by the program manager to pay for qualified education expenses of participating students. Funds in the MAPPS account are allocated by the program manager to support the educational assistance accounts of participating students.

(10) "MAPPS council" or "council" means the council established in [section 4].

(11) "Montana's academic prosperity program for scholars" or "MAPPS" means the program created in [sections 1 through 17].

(12) "Parent" means the legal parent, guardian, caretaker, or individual or entity with authority and responsibility to enroll a child in school or otherwise provide educational instruction.

(13) "Participating student" means a student participating in MAPPS who receives educational assistance.

(14) "Program manager" means the charitable not-for-profit organization contracted by the department after collaboration with the MAPPS council that:

(a) is lawfully authorized to do business in this state;

(b) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); and

(c) solicits donations to and administers the MAPPS account, administers educational assistance for participating students, and requests education tax credit preapprovals as set forth in [sections 1 through 17].

(15) (a) "Qualified education expense" means an expenditure for a participating student's educational needs consistent with 20-1-102 and approved by the MAPPS council pursuant to [section 6]. The term may include but is not limited to educationally related expenses for:

(i) tuition and fees at a nonpublic primary or secondary school, institution of higher education, summer education program, specialized after-school education program, or for career or technical courses;

(ii) textbooks, curriculum, or other instructional materials, including but not limited to any supplemental materials or associated online instruction required to fulfill the educational requirements of a qualified education provider;

(iii) fees for assessments and examinations, including but not limited to advanced placement examinations, examinations related to college or university admission, career credentialing examinations, and fees for preparatory courses for exams;

(iv) educational services and therapies, which may include occupational, behavioral, physical, speech-language, audiology, and other therapies designed to facilitate student learning;

(v) tutoring services provided by an individual or a tutoring facility;

(vi) educational software and multimedia materials;

(vii) transportation to and from a qualified education provider for the purpose of accessing a qualified education expense; and

(viii) other educational resources and services as determined by the MAPPS council pursuant to [section 4].

(b) The term does not include expenses for child care.

(16) "Qualified education provider" means an individual or entity delivering educational services to fulfill a student's instructional needs that is listed with the program manager and:

(a) (i) is a nonpublic school;

(ii) is a business, individual, nonprofit organization, or other entity that offers educational materials or services that are qualified education expenses; or

(iii) is a postsecondary institution;

(b) (i) is accredited or has applied for or has received provisional accreditation by a state, regional, or national accreditation organization; or

(ii) is not accredited and has informed the parent of a participating student that the provider is not accredited and is not seeking accreditation; and

(c) satisfies health and safety requirements applicable to the education provider, as prescribed by law.

(17) "Taxpayer" has the meaning provided in 15-30-2101.

NEW SECTION. Section 4. MAPPS council -- membership. (1) (a) There is an autonomous MAPPS council with authority, consistent with legislative intent as stated in [section 2], to:

(i) assist the department of administration in choosing a program manager;

(ii) oversee the work of the program manager; and

(iii) develop a list of qualified education expenses.

(b) The council is allocated to the department of administration for administrative purposes, as prescribed in 2-15-121(2), except as provided in this section.

(2) The council consists of five members who are appointed by the governor.

(3) Members appointed to the council shall represent a diverse group of stakeholders who are supportive of MAPPS, including parents, grandparents, private school leaders and board members, education entrepreneurs, and business leaders. All members of the council must have a demonstrated understanding of and commitment to expanding educational options within the state as a valid public purpose necessary to ensure equal educational opportunity for all children of the state, to preserve the liberty of parents to direct the education of their children, and to enhance the economic competitiveness and cultural enrichment of the state.

(4) (a) Initial appointments to the council must be for staggered terms as follows:

(i) one member with a 4-year term designated as the initial presiding officer of the council for 2 years;

(ii) two members with 3-year terms; and

(iii) two members with 2-year terms.

(b) All terms after the initial term must be for 3 years. Appointment to the initial terms must be made no later than 45 days following [the effective date of this act].

(5) Each member of the council is entitled to reimbursement for expenses on approval of the

1 referenced in 20-7-111.

2 (2) To provide clarity for parents and the program manager, the council may create a list of
3 expenditures that are not allowable under MAPPS.

4 (3) A parent or the program manager may request that the council review an expenditure and add
5 it to the list of qualified education expenses. The council shall convene in an expedient manner to review,
6 deliberate, and vote on requests under this subsection.

7 (4) (a) The council shall establish a procedure for appeal to the council by a parent whose request
8 for payment of an expense was denied by the program manager.

9 (b) The appeal procedure must be structured by the council to respond to the parent quickly and
10 efficiently. All decisions of the council are final.

11 (c) The appeal procedure must include:

12 (i) easy to follow directions on how to appeal;

13 (ii) a requirement to put requests for appeal in writing;

14 (iii) a timeframe for appeal, not to exceed 10 days following denial of a request for payment of an
15 expense; and

16 (iv) a timeframe for definitive response to a parent's appeal, not to exceed 10 days past the date of
17 the appeal.

18 (5) The council shall create an annual joint report with the program manager on the performance
19 of MAPPS and submit the report to the education interim budget committee and the revenue interim committee
20 in accordance with 5-11-210. The report must include any recommendations of the council or the program
21 manager on how MAPPS may be improved to better meet the legislative purposes and intent as stated in
22 [section 2], including any recommendations for statutory changes. The program manager's reports required
23 under [section 12] must be included in the joint report.

24

25 **NEW SECTION. Section 7. Education tax credit for parent purchasing qualified education**

26 **expenses -- rulemaking.** (1) There is an education tax credit allowed against the tax imposed by Title 15,

27 chapter 30, available to a parent of a participating student in MAPPS for the purchase of qualified education

28 expenses for the participating student.

(2) The education tax credit under this section may not exceed the annual educational assistance maximum as defined in [section 3].

(3) The education tax credit allowed under this section may not exceed the taxpayer's income tax liability but may be carried forward for 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) (a) (i) The aggregate amount of tax credits under this section is \$4 million for tax year 2026 and subsequent tax years, except as provided in this subsection (4).

(ii) Beginning in 2026, no later than December 31 of each year, the department of revenue shall determine if 80% of the aggregate limit provided for in both [section 8(4)(a)(iii)] and subsection (4)(a)(iii) ~~was of~~ this section were preapproved by the department of revenue. If ~~this condition is both of these conditions are~~ satisfied, the aggregate limit of tax credits under this section must be increased by ~~25%-20%~~ for the succeeding tax year, not to exceed \$10 million.

(iii) If the aggregate limit is increased in a tax year, the department of revenue shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).

(b) The aggregate limits under this section must apply to the tax year in which the parent of a participating student purchased qualified education expenses, regardless of whether the full credit is claimed in that tax year or carried forward.

(5) Following the determination of participating students accessing the education tax credit under this section by the program manager under [section 10]:

(a) the parent of a participating student shall sign an attestation of use contract accepting that:

(i) the education tax credit is awarded solely and exclusively to assist a parent's purchase of qualified education expenses; and

(ii) the parent has sole responsibility to comply with the applicable requirements of 20-5-109 and MAPPS; and

(b) the program manager shall request preapproval of an education tax credit in a manner prescribed by the department of revenue for the amount of the education tax credit sought by the parent of the

1 participating student.

2 (6) Following preapproval by the department of revenue, the program manager shall issue a
3 receipt of approval for an education tax credit in a form prescribed by the department of revenue to the parent
4 of the participating student indicating the value of the credit.

5 (7) A parent shall provide a copy of the receipt of approval when claiming the education tax credit.

6 (8) A parent shall maintain records and receipts for all qualified education expenses consistent
7 with department of revenue and internal revenue service regulations and may be required to submit or report
8 this information when filing a state tax return requesting an education tax credit under this section.

9 (9) A parent may be subject to a standard risk-based audit requested by the department of
10 revenue of qualified education expenses and payments under MAPPS if the department of revenue has just
11 cause. An audit under this subsection may not be regular, arbitrary, discriminatory, or capricious.

12 (10) The identity of a parent requesting or receiving education tax credits under this section is
13 confidential tax information subject to the provisions of 15-30-2618.

14 (11) The department of revenue may adopt rules, consistent with legislative intent as stated in
15 [section 2], as necessary to implement this section.

16
17 **NEW SECTION. Section 8. Education tax credits for donations to MAPPS account.** (1) A
18 taxpayer or corporation is allowed a credit against the tax imposed by Title 15, chapter 30 or 31, for donations
19 made to the program manager for deposit in the MAPPS account. The donor may not direct or designate
20 donations to a specific student, parent, legal guardian, or qualified education provider. The amount of the
21 education tax credit allowed is equal to the amount of the donation, not to exceed \$200,000 in a single tax year.

22 (2) A donation by an estate or trust qualifies for the education tax credit. A credit not used by the
23 estate or trust may be attributed to beneficiaries of the estate or trust in the same proportion used to report the
24 beneficiary's income from the estate or trust for Montana income tax purposes.

25 (3) The education tax credit allowed under this section may not exceed the taxpayer's income tax
26 liability but may be carried forward for 3 years. The entire amount of the education tax credit not used in the
27 year earned must be carried first to the earliest year in which the credit may be applied and then to each
28 succeeding tax year.

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(4) (a) (i) The aggregate amount of tax credits under this section is \$4 million for tax year 2026 and subsequent tax years, except as provided in this subsection (4).

(ii) Beginning in 2026, no later than December 31 of each year, the department of revenue shall determine if 80% of the aggregate limit provided for in both [section 7(4)(a)(iii)] and subsection (4)(a)(iii) ~~was of~~ this section were preapproved by the department of revenue. If ~~this condition is both of these conditions are~~ satisfied, the aggregate limit of tax credits under this section must be increased by ~~25%-20%~~ for the succeeding tax year, not to exceed \$10 million.

(iii) If the aggregate limit is increased in a tax year, the department of revenue shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).

(b) The aggregate limits under this section must apply to the tax year in which a donation is made, regardless of whether the full credit is claimed in that tax year or carried forward.

(5) An education tax credit is not allowed under this section with respect to an amount deducted by the taxpayer for state or federal tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion or deduction for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(6) On receiving a donation for which the donor has requested a tax credit, the program manager shall, on a first-come, first-served basis, beginning no later than the third Wednesday of January, request preapproval in a manner prescribed by the department of revenue that the amount of education tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).

(7) Following preapproval by the department of revenue, the program manager shall issue a receipt of approval for an education tax credit in a form prescribed by the department of revenue to a contributing taxpayer indicating the value of the donation received and approval of the education tax credit.

(8) A taxpayer shall provide a copy of the receipt of approval when claiming the education tax credit.

(9) The identity of a donor who donates to the program manager to fund educational assistance under MAPPS is confidential tax information subject to the provisions of 15-30-2618.

(10) The department of revenue may adopt rules, consistent with legislative intent as stated in [section 2], as necessary to implement this section.

NEW SECTION. Section 9. Program manager duties -- outreach and education -- soliciting parent applications. (1) The program manager shall:

(a) develop and execute a statewide outreach and education plan to ensure that all Montana parents and donors are aware of and understand MAPPS;

(b) maintain a website with information on:

(i) application procedures and timelines;

(ii) the availability of education tax credits;

(iii) qualified education expenses and qualified education providers;

(iv) the council's process for requesting review of education expenses and appealing the decision of the program manager; and

(v) frequently asked questions for taxpayers, parents, and education providers; and

(c) answer questions about the program and how to comply with its requirements.

(2) (a) No later than the third Friday in October, the program manager shall make applications available for education tax credits for parents under [section 7] and for educational assistance accounts under [section 11].

(b) The application must require information to ensure a student's eligibility and allow a parent to request an amount of educational assistance up to the annual educational assistance maximum.

(c) Each eligible student requires a separate application.

(d) If a student is eligible for an educational assistance account, the student's parent may apply for both an education tax credit for parents under [section 7] and for an educational assistance account under [section 11], but a participating student may not receive educational assistance in a tax year in excess of the annual educational assistance maximum.

(e) The application period must close by the third Friday of January, and the program manager