

1                                   **HIGHER EDUCATION SAVINGS AND**  
2                                   **SUPPLEMENTAL SAVINGS INCENTIVE**  
3                                   **PROGRAMS**

4                                   1998 GENERAL SESSION

5                                   STATE OF UTAH

6                                   **Sponsor: Keele Johnson**

7 AN ACT RELATING TO HIGHER EDUCATION; MODIFYING DEFINITIONS RELATED  
8 TO THE HIGHER EDUCATION SAVINGS INCENTIVE PROGRAM; ALLOWING THE  
9 BOARD OF REGENTS TO ESTABLISH THE MINIMUM AMOUNT FOR INVESTMENT  
10 AGREEMENTS IN THE PROGRAM; AND PROVIDING FOR TRANSFERS BETWEEN  
11 FUNDS IN THE PROGRAM AND FOR TRANSFERS FROM THE ADMINISTRATIVE  
12 FUND TO UCOPE AND OTHER STUDENT AID PROGRAMS.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15           **53B-8a-102**, as last amended by Chapter 39, Laws of Utah 1997

16           **53B-8b-105**, as enacted by Chapter 390, Laws of Utah 1997

17           **53B-8b-106**, as enacted by Chapter 390, Laws of Utah 1997

18 *Be it enacted by the Legislature of the state of Utah:*

19           Section 1. Section **53B-8a-102** is amended to read:

20           **53B-8a-102. Definitions.**

21           As used in this chapter:

22           (1) "Administrative fund" means the moneys used to administer the Utah Educational  
23 Savings Plan Trust.

24           (2) "Beneficiary" means the individual designated by a participation agreement to benefit  
25 from payments for higher education costs at an institution of higher education.

26           (3) "Benefits" means the payment of higher education costs on behalf of a beneficiary by  
27 the trust during the beneficiary's attendance at an institution of higher education.

1 (4) "Board" means the board of directors of the Utah Educational Savings Plan Trust  
2 which is the state Board of Regents acting in its capacity as the Utah Higher Education Assistance  
3 Authority under Title 53B, Chapter 12.

4 (5) "Endowment fund" means the endowment fund established under Section 53B-8a-107  
5 which is held as a separate fund within the trust.

6 (6) "Higher education costs" means the certified costs of tuition, fees, room and board,  
7 books, supplies, and equipment required for the enrollment or attendance of a designated  
8 beneficiary at an institution of higher education.

9 (7) "Institution of higher education" means a qualified proprietary school approved by the  
10 board, a two-year or four-year public or regionally accredited private nonprofit college or  
11 university or a Utah applied technology center, with regard to students enrolled in postsecondary  
12 training or education programs.

13 (8) "Participant" means an individual, firm, corporation, or its legal representative or their  
14 legal successor, who has entered into a participation agreement under this chapter for the advance  
15 payment of higher education costs on behalf of a beneficiary.

16 (9) "Participation agreement" means an agreement between a participant and the trust  
17 entered into under this chapter.

18 (10) "Program administrator" means the administrator of the trust appointed by the board  
19 to administer and manage the trust.

20 (11) "Program fund" means the program fund created under Section 53B-8a-107, which  
21 is held as a separate fund within the trust.

22 (12) "Tuition and fees" means the quarterly or semester charges imposed to attend an  
23 institution of higher education and required as a condition of enrollment.

24 (13) "Utah Educational Savings Plan Trust" or "trust" means the trust created under  
25 Section 53B-8a-103.

26 (14) "Vested participation agreement" means a participation agreement which has been  
27 in full force and effect during eight continuous years of residency of the beneficiary in the state  
28 while participating in the trust.

29 Section 2. Section **53B-8b-105** is amended to read:

30 **53B-8b-105. Participation agreements -- Content.**

31 (1) Each participation agreement shall provide for the payment of qualified higher

1 education expenses of the eligible beneficiary of the participation agreement.

2 (2) The trust has authority to enter into participation agreements with participants on  
3 behalf of designated beneficiaries under the following terms and agreements:

4 (a) each participation agreement may include one or more designated beneficiaries, and  
5 for each designated beneficiary have a participant account, which the trust shall account for  
6 separately;

7 (b) ~~[(i)]~~ each participation agreement shall require a participant to agree to invest at least[:]  
8 a minimum amount to be established by the board;

9 ~~[(A) \$2,500 initially and not less than \$100 per month from the date of the participation  
10 agreement until at least the 16th birthday of the youngest designated beneficiary; or]~~

11 ~~[(B) \$10,000 initially;]~~

12 ~~[(ii) the program administrator may increase these minimums at his discretion;]~~

13 (c) each participation agreement shall state clearly that there are no guarantees regarding  
14 moneys in the trust, either as to earnings or as to return of principal, but that the value of each  
15 participant account depends on the performance of the mutual funds chosen by the investment  
16 advisor and the fees and charges under the participation agreement;

17 (d) the participation agreement does not guarantee in any way that higher education costs  
18 will be equal to projections and estimates provided by the trust or that any designated beneficiary  
19 named in any participation agreement will:

20 (i) be admitted to an institution of higher education;

21 (ii) if admitted, be determined a resident for tuition purposes by the institution;

22 (iii) be allowed to continue attendance at the institution following admission; or

23 (iv) graduate from an institution of higher education;

24 (e) each participation agreement shall include provisions necessary to comply with Section  
25 529 of the Code;

26 (f) each participation agreement shall provide that any contributor to, or designated  
27 beneficiary under, the participation agreement may not direct the investment of any contributions  
28 or earnings on contributions;

29 (g) each participation agreement shall provide that no part of the money in any participant  
30 account may be used as security for a loan;

31 (h) each participation agreement shall provide that the participant may withdraw moneys

1 from any participant account at any time;

2 (i) each participation agreement may provide for a reasonable fee, consisting of two parts:

3 (i) the first, an annual administrative charge payable to the administrative fund, assessed  
4 against the assets held under the participation agreement, not to exceed \$50 annually; and

5 (ii) the second, a daily charge deducted from the assets of the program fund at a rate  
6 equivalent to an annual effective rate of not more than .50%, no more than .25% of which shall  
7 be payable to the administrative fund, and no more than .25% of which shall be payable to the  
8 investment advisor for the trust;

9 (j) each participation agreement shall provide that if a designated beneficiary graduates  
10 from an institution of higher education and a balance remains in the participation account  
11 established for the beneficiary, then the participant shall notify the program administrator and  
12 request an immediate refund of the remaining balance;

13 (k) each participation agreement shall provide that no participant may borrow from the  
14 trust; and

15 (l) each participation agreement shall provide that, notwithstanding any other provision  
16 of law, the program administrator may amend the agreement unilaterally and retroactively, if  
17 necessary, to maintain the trust as a qualified state tuition program under Section 529 of the Code.

18 Section 3. Section **53B-8b-106** is amended to read:

19 **53B-8b-106. Program and administrative funds -- Transfer between funds.**

20 (1) The board shall segregate moneys received by the trust into two funds, the program  
21 fund and the administrative fund.

22 (2) Transfers may be made from the administrative fund to the [endowment] program  
23 fund.

24 (3) Transfers may be made from the program fund to the administrative fund for the  
25 purpose of paying operating costs associated with administering the trust and as otherwise required  
26 under this chapter.

27 (4) Transfers may be made from the administrative fund to the Utah Educational Savings  
28 Plan Trust administrative or endowment funds established under Section 53B-8a-107.

29 (5) Transfers may be made from the administrative fund to the Utah Centennial  
30 Opportunities Program for Education established under Title 53B, Chapter 13a, or any other  
31 student scholarship, loan, grant, or other program established by the board to facilitate access to

1 post-secondary education for financially needy students.

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**Legislative Review Note**  
**as of 12-12-97 10:36 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**