

1 **HIGHER EDUCATION SAVINGS INCENTIVE**

2 **PROGRAM AMENDMENTS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Keele Johnson**

6 AN ACT RELATING TO HIGHER EDUCATION; MODIFYING PROVISIONS IN THE  
7 HIGHER EDUCATION SAVINGS AND SUPPLEMENTAL SAVINGS INCENTIVE  
8 PROGRAMS RELATED TO AMOUNTS PARTICIPANTS MAY INVEST IN THE  
9 PROGRAMS; PROVIDING THAT THE STATE BOARD OF REGENTS SHALL ESTABLISH  
10 THOSE AMOUNTS; AND PROVIDING FOR SAVINGS AMOUNTS IN ADDITION TO THE  
11 AMOUNT WHICH QUALIFIES FOR STATE INCOME TAX DEDUCTIBILITY <sup>h</sup> ; **AND**

11a **PROVIDING FOR RETROSPECTIVE OPERATION <sup>h</sup> .**

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

13 AMENDS:

14 **53B-8a-106**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

15 **53B-8b-105**, as enacted by Chapter 390, Laws of Utah 1997

16 **59-10-114**, as last amended by Chapter 56, Laws of Utah 1997

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

18 Section 1. Section **53B-8a-106** is amended to read:

19 **53B-8a-106. Participation agreements for trust.**

20 The trust may enter into participation agreements with participants on behalf of  
21 beneficiaries pursuant to the following terms and agreements:

22 (1) (a) Each participation agreement shall require a participant to agree to invest a specific  
23 amount of money in the trust for a specific period of time for the benefit of a specific beneficiary,  
24 not to exceed [~~\$1,200 per beneficiary per year, adjusted annually to reflect increases in the~~  
25 ~~Consumer Price Index~~] an amount determined by the board.

26 (b) Participation agreements may be amended to provide for adjusted levels of payments  
27 based upon changed circumstances or changes in educational plans [~~and may contain penalties for~~

28 ~~failure to make payments when scheduled].~~

29 (c) A participant may make additional optional payments as long as the total payments for  
30 a specific beneficiary do not exceed the total estimated higher education costs as determined by  
31 the board.

32 (d) The maximum amount of investments that may be subtracted from federal taxable  
33 income of a resident or nonresident individual under Subsection 59-10-114(2)(j) shall be \$1,200  
34 for each individual beneficiary for the ~~h [fiscal year beginning July 1,1996, ]~~ h 1996 CALENDAR  
34a YEAR h and an amount adjusted  
35 annually thereafter to reflect increases in the Consumer Price Index.

36 (2) The participation agreement may include a minimum rate of return for the investment  
37 made by the participant.

38 (3) Beneficiaries designated in participation agreements may be designated from date of  
39 birth through age 16.

40 (4) Payment of benefits provided under participation agreements must begin not later than  
41 the first full fall academic quarter or semester at an institution of higher education following the  
42 22nd birthday or high school graduation of the beneficiary, whichever is later, unless the  
43 participant notifies the program administrator to the contrary.

44 (5) The execution of a participation agreement by the trust may not guarantee in any way  
45 that higher education costs will be equal to projections and estimates provided by the trust or that  
46 the beneficiary named in any participation agreement will:

47 (a) be admitted to an institution of higher education;

48 (b) if admitted, be determined a resident for tuition purposes by the institution of higher  
49 education, unless the participation agreement is vested;

50 (c) be allowed to continue attendance at the institution of higher education following  
51 admission; or

52 (d) graduate from the institution of higher education.

53 (6) Beneficiaries may be changed as permitted by the rules and regulations of the board  
54 upon written request of the participant prior to the date of admission of any beneficiary under a  
55 participation agreement by an institution of higher education so long as the substitute beneficiary  
56 is eligible for participation.

57 (7) Participation agreements may be freely amended throughout their terms in order to  
58 enable participants to increase or decrease the level of participation, change the designation of

59 beneficiaries, and carry out similar matters as authorized by rule.

60 (8) Each participation agreement shall provide that the participation agreement may be  
61 canceled upon the terms and conditions, and upon payment of the fees and costs set forth and  
62 contained in the board's rules and regulations.

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

64 **53B-8b-105. Participation agreements -- Content.**

65 (1) Each participation agreement shall provide for the payment of qualified higher  
66 education expenses of the eligible beneficiary of the participation agreement.

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

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

72 (b) ~~(i)~~ each participation agreement shall require a participant to agree to invest ~~[at least:]~~  
73 a minimum amount determined by the board;

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

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

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

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

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

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

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

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

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

89 (e) each participation agreement shall include provisions necessary to comply with Section

90 529 of the Code;

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

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

96 (h) each participation agreement shall provide that the participant may withdraw moneys  
97 from any participant account at any time;

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

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

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

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

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

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

114 Section 3. Section **59-10-114** is amended to read:

115 **59-10-114. Additions to and subtractions from federal taxable income of an**  
116 **individual.**

117 (1) There shall be added to federal taxable income of a resident or nonresident individual:

118 (a) the amount of any income tax imposed by this or any predecessor Utah individual  
119 income tax law and the amount of any income tax imposed by the laws of another state, the District  
120 of Columbia, or a possession of the United States, to the extent deducted from federal adjusted

121 gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable  
122 income;

123 (b) a lump sum distribution allowable as a deduction under Section 402(e)(3), Internal  
124 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in  
125 determining federal adjusted gross income;

126 (c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue  
127 Code;

128 (d) a withdrawal from a medical care savings account and any penalty imposed in the  
129 taxable year if:

130 (i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant  
131 to Section 220, Internal Revenue Code; and

132 (ii) the withdrawal is subject to Subsections 31A-32-105(1) and (2); and

133 (e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education  
134 Savings Incentive Program, in the year in which the amount is refunded.

135 (2) There shall be subtracted from federal taxable income of a resident or nonresident  
136 individual:

137 (a) the interest or dividends on obligations or securities of the United States and its  
138 possessions or of any authority, commission, or instrumentality of the United States, to the extent  
139 includable in gross income for federal income tax purposes but exempt from state income taxes  
140 under the laws of the United States, but the amount subtracted under this subsection shall be  
141 reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations  
142 or securities described in this subsection, and by any expenses incurred in the production of  
143 interest or dividend income described in this subsection to the extent that such expenses, including  
144 amortizable bond premiums, are deductible in determining federal taxable income;

145 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all  
146 allowable credits, as reported on the United States individual income tax return of the taxpayer for  
147 the same taxable year;

148 (c) the amount of adoption expenses which, for purposes of this subsection, means any  
149 actual medical and hospital expenses of the mother of the adopted child which are incident to the  
150 child's birth and any welfare agency, child placement service, legal, and other fees or costs relating  
151 to the adoption;

152 (d) amounts received by taxpayers under age 65 as retirement income which, for purposes  
153 of this section, means pensions and annuities, paid from an annuity contract purchased by an  
154 employer under a plan which meets the requirements of Section 404 (a)(2), Internal Revenue Code,  
155 or purchased by an employee under a plan which meets the requirements of Section 408, Internal  
156 Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District  
157 of Columbia, to the employee involved or the surviving spouse;

158 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal  
159 retirement exemption;

160 (f) 75% of the amount of the personal exemption, as defined and calculated in the Internal  
161 Revenue Code, for each dependent child with a disability and adult with a disability who is  
162 claimed as a dependent on a taxpayer's return;

163 (g) any amount included in federal taxable income that was received pursuant to any  
164 federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to  
165 United States citizens and resident aliens of Japanese ancestry who were interned during World  
166 War II;

167 (h) subject to the limitations of Subsection (3)(e), 60% of the amounts paid by the taxpayer  
168 during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, Insurance  
169 Code, for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents to the extent the  
170 amounts paid for health insurance were not deductible under Sections 125, 162, or 213, Internal  
171 Revenue Code, in determining federal taxable income;

172 (i) except as otherwise provided in this subsection, the amount of a contribution made in  
173 the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a  
174 contribution to a medical care savings account established pursuant to Title 31A, Chapter 32,  
175 Medical Care Savings Account Act, to the extent the contribution is accepted by the account  
176 administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not  
177 deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue  
178 Code. A contribution deductible under this subsection may not exceed either of the following:

179 (i) the maximum contribution allowed under the Medical Care Savings Account Act for  
180 the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by  
181 health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other  
182 spouse, and each spouse has a medical care savings account; or

183 (ii) the maximum contribution allowed under the Medical Care Savings Account Act for  
184 the tax year for taxpayers:

185 (A) who do not file a joint return; or

186 (B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

187 (j) the amount included in federal taxable income that was derived from money paid by  
188 the taxpayer to the program fund [~~and investment income earned on those payments~~] under Title  
189 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined  
190 under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements  
191 under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary.

192 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for  
193 taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800,  
194 except that:

195 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned  
196 over \$32,000, the amount of the retirement income exemption that may be subtracted shall be  
197 reduced by 50 cents;

198 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
199 earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall  
200 be reduced by 50 cents; and

201 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,  
202 the amount of the retirement income exemption that may be subtracted shall be reduced by 50  
203 cents.

204 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption  
205 shall be further reduced according to the following schedule:

206 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned  
207 over \$32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

208 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
209 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50  
210 cents; and

211 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,  
212 the amount of the personal retirement exemption shall be reduced by 50 cents.

213 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated

214 by adding to federal adjusted gross income any interest income not otherwise included in federal  
215 adjusted gross income.

216 (d) For purposes of determining ownership of items of retirement income common law  
217 doctrine will be applied in all cases even though some items may have originated from service or  
218 investments in a community property state. Amounts received by the spouse of a living retiree  
219 because of the retiree's having been employed in a community property state are not deductible as  
220 retirement income of such spouse.

221 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care  
222 insurance as defined in Title 31A, Chapter 1, Insurance Code, is not allowed:

223 (i) for an amount that is reimbursed or funded in whole or in part by the federal  
224 government, the state, or an agency or instrumentality of the federal government or the state; and

225 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in  
226 whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

226a **h Section 2. Retrospective Operation.**

226b **THIS ACT HAS RETROSPECTIVE OPERATION TO JANUARY 1, 1999. h**

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**Legislative Review Note**  
**as of 1-25-99 11:17 AM**

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

**Office of Legislative Research and General Counsel**