

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.

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 fiscal year beginning July 1,1996, 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.

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