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AN ACT

RELATING TO EDUCATION; ALIGNING THE USES OF EDUCATION SAVINGS
PLANS PROVIDED FOR IN THE EDUCATION TRUST ACT TO COMPLY WITH
FEDERALLY ALLOWABLE USES OF THE SAVINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-2-2 NMSA 1978 (being Laws 1986,
Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS.--For the purpose of the Income Tax
Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross
income as defined in Section 62 of the Internal Revenue Code,
as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part
of the estate's or trust's income defined as taxable income
and upon which the federal income tax is calculated in the
Internal Revenue Code for income tax purposes plus, for
taxable years beginning on or after January 1, 1991, the
amount of the net operating loss deduction allowed by Section
172(a) of the Internal Revenue Code, as that section may be
amended or renumbered, and taken by the taxpayer for that
year;

(2) means, for taxpayers other than estates
or trusts, that part of the taxpayer's income defined as

1 adjusted gross income plus, for taxable years beginning on or
2 after January 1, 1991, the amount of the net operating loss
3 deduction allowed by Section 172(a) of the Internal Revenue
4 Code, as that section may be amended or renumbered, and taken
5 by the taxpayer for that year;

6 (3) includes, for all taxpayers, any other
7 income of the taxpayer not included in adjusted gross income
8 but upon which a federal tax is calculated pursuant to the
9 Internal Revenue Code for income tax purposes, except amounts
10 for which a calculation of tax is made pursuant to Section 55
11 of the Internal Revenue Code, as that section may be amended
12 or renumbered; "base income" also includes interest received
13 on a state or local bond;

14 (4) includes, for all taxpayers, an amount
15 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
16 taxable year if:

17 (a) such amount is transferred to
18 another qualified tuition program, as defined in Section 529
19 of the Internal Revenue Code, not authorized in the Education
20 Trust Act; or

21 (b) a distribution or refund is made
22 for any reason other than: 1) to pay for federally allowable
23 qualified higher education expenses, set out in Section 529
24 of the Internal Revenue Code, including other expenses
25 allowed pursuant to that section as qualified expenses; or 2)

1 upon the beneficiary's death, disability or receipt of a
2 scholarship; and

3 (5) excludes, for a taxpayer who conducts a
4 lawful business pursuant to the laws of the state, an amount
5 equal to any expenditure that is eligible to be claimed as a
6 federal income tax deduction but is disallowed by Section
7 280E of the Internal Revenue Code, as that section may be
8 amended or renumbered;

9 C. "compensation" means wages, salaries,
10 commissions and any other form of remuneration paid to
11 employees for personal services;

12 D. "department" means the taxation and revenue
13 department, the secretary or any employee of the department
14 exercising authority lawfully delegated to that employee by
15 the secretary;

16 E. "fiduciary" means a guardian, trustee,
17 executor, administrator, committee, conservator, receiver,
18 individual or corporation acting in any fiduciary capacity;

19 F. "filing status" means "married filing joint
20 returns", "married filing separate returns", "head of
21 household", "surviving spouse" and "single", as those terms
22 are generally defined for federal tax purposes;

23 G. "fiscal year" means any accounting period of
24 twelve months ending on the last day of any month other than
25 December;

1 H. "head of household" means "head of household"
2 as generally defined for federal income tax purposes;

3 I. "individual" means a natural person, an estate,
4 a trust or a fiduciary acting for a natural person, trust or
5 estate;

6 J. "Internal Revenue Code" means the United States
7 Internal Revenue Code of 1986, as amended;

8 K. "lump-sum amount" means, for the purpose of
9 determining liability for federal income tax, an amount that
10 was not included in adjusted gross income but upon which the
11 five-year-averaging or the ten-year-averaging method of tax
12 computation provided in Section 402 of the Internal Revenue
13 Code, as that section may be amended or renumbered, was
14 applied;

15 L. "modified gross income" means all income of the
16 taxpayer and, if any, the taxpayer's spouse and dependents,
17 undiminished by losses and from whatever source, including:

- 18 (1) compensation;
- 19 (2) net profit from business;
- 20 (3) gains from dealings in property;
- 21 (4) interest;
- 22 (5) net rents;
- 23 (6) royalties;
- 24 (7) dividends;
- 25 (8) alimony and separate maintenance

1 payments;

2 (9) annuities;

3 (10) income from life insurance and
4 endowment contracts;

5 (11) pensions;

6 (12) discharge of indebtedness;

7 (13) distributive share of partnership

8 income;

9 (14) income in respect of a decedent;

10 (15) income from an interest in an estate or
11 a trust;

12 (16) social security benefits;

13 (17) unemployment compensation benefits;

14 (18) workers' compensation benefits;

15 (19) public assistance and welfare benefits;

16 (20) cost-of-living allowances; and

17 (21) gifts;

18 M. "modified gross income" excludes:

19 (1) payments for hospital, dental, medical
20 or drug expenses to or on behalf of the taxpayer;

21 (2) the value of room and board provided by
22 federal, state or local governments or by private individuals
23 or agencies based upon financial need and not as a form of
24 compensation;

25 (3) payments pursuant to a federal, state or

1 local government program directly or indirectly to a third
2 party on behalf of the taxpayer when identified to a
3 particular use or invoice by the payer; or

4 (4) payments for credits and rebates
5 pursuant to the Income Tax Act and made for a credit pursuant
6 to Section 7-3-9 NMSA 1978;

7 N. "net income" means, for estates and trusts,
8 base income adjusted to exclude amounts that the state is
9 prohibited from taxing because of the laws or constitution of
10 this state or the United States and means, for taxpayers
11 other than estates or trusts, base income adjusted to
12 exclude:

13 (1) an amount equal to the standard
14 deduction allowed the taxpayer for the taxpayer's taxable
15 year by Section 63 of the Internal Revenue Code, as that
16 section may be amended or renumbered;

17 (2) an amount equal to the itemized
18 deductions defined in Section 63 of the Internal Revenue
19 Code, as that section may be amended or renumbered, allowed
20 the taxpayer for the taxpayer's taxable year less the amount
21 excluded pursuant to Paragraph (1) of this subsection and
22 less the amount of state and local income and sales taxes
23 included in the taxpayer's itemized deductions;

24 (3) an amount equal to the product of the
25 exemption amount allowed for the taxpayer's taxable year by

1 Section 151 of the Internal Revenue Code, as that section may
2 be amended or renumbered, multiplied by the number of
3 personal exemptions allowed for federal income tax purposes;

4 (4) income from obligations of the United
5 States of America less expenses incurred to earn that income;

6 (5) other amounts that the state is
7 prohibited from taxing because of the laws or constitution of
8 this state or the United States;

9 (6) for taxable years that began prior to
10 January 1, 1991, an amount equal to the sum of:

11 (a) net operating loss carryback
12 deductions to that year from taxable years beginning prior to
13 January 1, 1991 claimed and allowed, as provided by the
14 Internal Revenue Code; and

15 (b) net operating loss carryover
16 deductions to that year claimed and allowed;

17 (7) for taxable years beginning on or after
18 January 1, 1991 and prior to January 1, 2013, an amount equal
19 to the sum of any net operating loss carryover deductions to
20 that year claimed and allowed; provided that the amount of
21 any net operating loss carryover from a taxable year
22 beginning on or after January 1, 1991 and prior to January 1,
23 2013 may be excluded only as follows:

24 (a) in the case of a timely filed
25 return, in the taxable year immediately following the taxable

1 year for which the return is filed; or

2 (b) in the case of amended returns or
3 original returns not timely filed, in the first taxable year
4 beginning after the date on which the return or amended
5 return establishing the net operating loss is filed; and

6 (c) in either case, if the net
7 operating loss carryover exceeds the amount of net income
8 exclusive of the net operating loss carryover for the taxable
9 year to which the exclusion first applies, in the next four
10 succeeding taxable years in turn until the net operating loss
11 carryover is exhausted for any net operating loss carryover
12 from a taxable year prior to January 1, 2013; in no event
13 shall a net operating loss carryover from a taxable year
14 beginning prior to January 1, 2013 be excluded in any taxable
15 year after the fourth taxable year beginning after the
16 taxable year to which the exclusion first applies;

17 (8) for taxable years beginning on or after
18 January 1, 2013, an amount equal to the sum of any net
19 operating loss carryover deductions to that year claimed and
20 allowed; provided that the amount of any net operating loss
21 carryover may be excluded only as follows:

22 (a) in the case of a timely filed
23 return, in the taxable year immediately following the taxable
24 year for which the return is filed; or

25 (b) in the case of amended returns or

1 original returns not timely filed, in the first taxable year
2 beginning after the date on which the return or amended
3 return establishing the net operating loss is filed; and

4 (c) in either case, if the net
5 operating loss carryover exceeds the amount of net income
6 exclusive of the net operating loss carryover for the taxable
7 year to which the exclusion first applies, in the next
8 nineteen succeeding taxable years in turn until the net
9 operating loss carryover is exhausted for any net operating
10 loss carryover from a taxable year beginning on or after
11 January 1, 2013; in no event shall a net operating loss
12 carryover from a taxable year beginning: 1) prior to January
13 1, 2013 be excluded in any taxable year after the fourth
14 taxable year beginning after the taxable year to which the
15 exclusion first applies; and 2) on or after January 1, 2013
16 be excluded in any taxable year after the nineteenth taxable
17 year beginning after the taxable year to which the exclusion
18 first applies; and

19 (9) for taxable years beginning on or after
20 January 1, 2011, an amount equal to the amount included in
21 adjusted gross income that represents a refund of state and
22 local income and sales taxes that were deducted for federal
23 tax purposes in taxable years beginning on or after January
24 1, 2010;

25 0. "net operating loss" means any net operating

1 loss, as defined by Section 172(c) of the Internal Revenue
2 Code, as that section may be amended or renumbered, for a
3 taxable year as further increased by the income, if any, from
4 obligations of the United States for that year less related
5 expenses;

6 P. "net operating loss carryover" means the
7 amount, or any portion of the amount, of a net operating loss
8 for any taxable year that, pursuant to Paragraph (6), (7) or
9 (8) of Subsection N of this section, may be excluded from
10 base income;

11 Q. "nonresident" means every individual not a
12 resident of this state;

13 R. "person" means any individual, estate, trust,
14 receiver, cooperative association, club, corporation,
15 company, firm, partnership, limited liability company, joint
16 venture, syndicate or other association; "person" also means,
17 to the extent permitted by law, any federal, state or other
18 governmental unit or subdivision or agency, department or
19 instrumentality thereof;

20 S. "resident" means an individual who is domiciled
21 in this state during any part of the taxable year or an
22 individual who is physically present in this state for one
23 hundred eighty-five days or more during the taxable year; but
24 any individual, other than someone who was physically present
25 in the state for one hundred eighty-five days or more during

1 the taxable year, who, on or before the last day of the
2 taxable year, changed the individual's place of abode to a
3 place without this state with the bona fide intention of
4 continuing actually to abide permanently without this state
5 is not a resident for the purposes of the Income Tax Act for
6 periods after that change of abode;

7 T. "secretary" means the secretary of taxation and
8 revenue or the secretary's delegate;

9 U. "state" means any state of the United States,
10 the District of Columbia, the commonwealth of Puerto Rico,
11 any territory or possession of the United States or any
12 political subdivision of a foreign country;

13 V. "state or local bond" means a bond issued by a
14 state other than New Mexico or by a local government other
15 than one of New Mexico's political subdivisions, the interest
16 from which is excluded from income for federal income tax
17 purposes under Section 103 of the Internal Revenue Code, as
18 that section may be amended or renumbered;

19 W. "surviving spouse" means "surviving spouse" as
20 generally defined for federal income tax purposes;

21 X. "taxable income" means net income less any
22 lump-sum amount;

23 Y. "taxable year" means the calendar year or
24 fiscal year upon the basis of which the net income is
25 computed under the Income Tax Act and includes, in the case

1 of the return made for a fractional part of a year under the
2 provisions of the Income Tax Act, the period for which the
3 return is made; and

4 Z. "taxpayer" means any individual subject to the
5 tax imposed by the Income Tax Act."

6 SECTION 2. Section 7-2-32 NMSA 1978 (being Laws 1997,
7 Chapter 259, Section 8) is amended to read:

8 "7-2-32. DEDUCTION--PAYMENTS INTO EDUCATION TRUST
9 FUND.--A taxpayer may claim a deduction from net income in an
10 amount equal to the payments made by the taxpayer into the
11 education trust fund pursuant to an education investment
12 agreement or prepaid tuition contract under the Education
13 Trust Act in the taxable year for which the deduction is
14 being claimed. The amount of payments made on behalf of any
15 one beneficiary that may be deducted shall not exceed in the
16 aggregate the cost of attendance at the applicable
17 institution of higher education, as determined by the
18 education trust board. Married individuals who file separate
19 returns for the taxable year in which they could have filed a
20 joint return may each claim only one-half of the deduction
21 that would have been allowed on the joint return.
22 Individuals having income both within and without this state
23 shall apportion this deduction in accordance with regulations
24 of the secretary."

25 SECTION 3. Section 21-21K-2 NMSA 1978 (being Laws 2014,

1 Chapter 76, Section 2) is amended to read:

2 "21-21K-2. DEFINITIONS.--As used in the Education Trust
3 Act:

4 A. "account" means an individual trust account
5 pursuant to an education investment agreement entered into
6 pursuant to the education savings program;

7 B. "account owner" means the person who has
8 entered into an education investment agreement with the board
9 and is designated as having the right to withdraw money from
10 the account before the account is disbursed to or for the
11 benefit of the beneficiary;

12 C. "beneficiary" means the person who is
13 designated at the time the account is opened, or the person
14 who replaces a designated beneficiary, as the person whose
15 qualified higher education expenses are expected to be paid
16 from the account;

17 D. "board" means the education trust board;

18 E. "education investment agreement" means an
19 agreement entered into by the board and an account owner to
20 participate in the education savings program and establish an
21 account to be used for the qualified higher education
22 expenses of a beneficiary;

23 F. "department" means the higher education
24 department;

25 G. "eligible educational institution" means any

1 college, university, vocational school or other
2 post-secondary institution recognized by the United States
3 department of education;

4 H. "financial institution" means a bank, broker-
5 dealer, insurance company, mutual fund, savings and loan
6 association or other financial entity;

7 I. "Internal Revenue Code" means the federal
8 Internal Revenue Code of 1986, as amended;

9 J. "manager" means a financial institution under
10 contract with the board to serve as manager of an education
11 savings plan in the education savings program and receive
12 contributions on behalf of the program; and

13 K. "qualified higher education expenses" means
14 federally allowable qualified expenses set out in the
15 Internal Revenue Code Section 529 and includes other expenses
16 allowed under that section as qualified education expenses."

17 SECTION 4. Section 21-21K-3 NMSA 1978 (being Laws 2014,
18 Chapter 76, Section 3) is amended to read:

19 "21-21K-3. EDUCATION SAVINGS PROGRAM CREATED--EDUCATION
20 TRUST FUND CREATED--PURPOSE--INVESTMENT OF ACCOUNTS BY THIRD
21 PARTIES--BOARD REVIEW--PROGRAM ADMINISTRATION FUND CREATED--
22 PURPOSE.--

23 A. The "education savings program" is created to
24 allow interested persons to enter into education investment
25 agreements with the board as a means to save money to pay a

1 beneficiary's eligible expenses for an education. The
2 education savings program may consist of one or more
3 education savings plans. The board shall administer the
4 education savings program through accounts established in the
5 education trust fund pursuant to education investment
6 agreements. Money in an account may be used by the
7 beneficiary for qualified higher education expenses.

8 B. The board shall develop and administer the
9 education savings program in a manner that allows account
10 owners and beneficiaries to obtain and maintain federal
11 income tax benefits or treatment provided by the Internal
12 Revenue Code for qualified tuition programs and exemptions
13 under the federal securities laws.

14 C. The "education trust fund" is created as a
15 nonreverting fund in the state treasury. The fund shall be
16 administered by the board to carry out the education savings
17 program. The fund consists of separate trust accounts held
18 in the name of account owners. Income from investment of the
19 fund shall be credited to the separate accounts.

20 D. The board may contract with one or more
21 managers to invest the contributions deposited to the
22 education trust fund. The board and the managers shall
23 account for each contribution by an account owner.

24 E. Amounts may be withdrawn or transferred from
25 trust accounts in the education trust fund only as provided

1 in the related education investment agreements. All money
2 contributed to accounts established in the fund are held in
3 trust by the board and the respective managers for the sole
4 benefit of the respective account owners and beneficiaries.

5 F. The "program administration fund" is created as
6 a nonreverting fund in the state treasury. The fund consists
7 of all administrative and other fees received by the board
8 pursuant to education investment agreements and contracts
9 with managers and any other money credited to the fund. The
10 state treasurer shall invest the fund, and the investment
11 income shall be credited to the fund. Money in the fund may
12 be used to pay costs of establishing, marketing and otherwise
13 administering the education savings program in accordance
14 with the Education Trust Act. Disbursements from the fund
15 shall be by warrants of the secretary of finance and
16 administration on vouchers signed by the director of the
17 board or the director's authorized representative."

18 SECTION 5. Section 21-21K-4.1 NMSA 1978 (being Laws
19 2014, Chapter 76, Section 5) is amended to read:

20 "21-21K-4.1. BOARD--POWERS AND DUTIES.--

21 A. The board may:

22 (1) adopt, amend or repeal and promulgate
23 rules necessary to carry out the provisions of the Education
24 Trust Act;

25 (2) sue and be sued;

- 1 (3) enter into contracts;
- 2 (4) employ or contract for professional,
3 technical and clerical staff and independent counsel;
- 4 (5) contract with one or more financial
5 institutions to manage the education trust fund and the
6 separate trust accounts;
- 7 (6) enter into education investment
8 agreements with interested persons to participate in the
9 education savings program;
- 10 (7) charge, impose and collect
11 administrative fees as provided in an education investment
12 agreement or other contract relating to the education savings
13 program in amounts not exceeding the reasonable costs of
14 establishing, marketing and otherwise administering the
15 program; and
- 16 (8) do those things necessary or convenient
17 in accordance with the Education Trust Act to carry out the
18 provisions of that act.

19 B. The board shall adopt and promulgate education
20 trust fund investment guidelines and otherwise administer the
21 education savings program in compliance with the Uniform
22 Prudent Investor Act."

23 SECTION 6. Section 21-21K-5 NMSA 1978 (being Laws 2014,
24 Chapter 76, Section 6) is amended to read:

25 "21-21K-5. EDUCATION INVESTMENT AGREEMENTS--ACCOUNTS.--

1 A. An account owner may enter into an education
2 investment agreement with the board under which an account in
3 the education trust fund is established and contributions may
4 be made to the account from time to time, consistent with the
5 terms of the agreement, to defray the cost of qualified
6 higher education expenses. Each account shall be accounted
7 for separately from all other accounts in the education trust
8 fund. An account owner may enter into an education
9 investment agreement on behalf of any beneficiary.

10 B. Gifts and bequests by persons other than the
11 account owner may be made to an account in the education
12 trust fund for the benefit of the beneficiary in accordance
13 with the terms of the education investment agreement.

14 C. The board shall set forth procedures relating
15 to the withdrawal of money from an account established in the
16 education trust fund pursuant to an education investment
17 agreement.

18 D. An education investment agreement may be
19 terminated by the account owner at any time. The board shall
20 specify by rule appropriate provisions for the term and
21 termination of education investment agreements.

22 E. Contributions made to an account in the
23 education trust fund, together with accrued investment
24 earnings and capital appreciation in such account, shall be
25 excluded from any calculation of the respective beneficiary's

1 student financial aid eligibility in New Mexico.

2 F. The board shall notify each account owner
3 annually about the status of the account owner's account in
4 the education trust fund."

5 SECTION 7. Section 21-21K-6 NMSA 1978 (being Laws 2014,
6 Chapter 76, Section 7) is amended to read:

7 "21-21K-6. CLAIMS OF CREDITORS--EXEMPTION--LIABILITY
8 IMMUNITY--STATE NOT LIABLE.--

9 A. Money credited to or expended from any account
10 in the education trust fund by or on behalf of an account
11 owner or beneficiary is exempt from all claims of creditors
12 of the account owner, the beneficiary or the board.

13 B. If the board carries out its review
14 responsibility of the manager's investment decisions
15 consistent with the Uniform Prudent Investor Act, the board
16 or an employee shall not be liable to anyone for any losses
17 sustained as a result of investment decisions. A member of
18 the board, while acting within the scope of the member's
19 authority or while acting as a trustee of the education trust
20 fund or any separate trust fund or account of the board,
21 shall not be subject to any personal liability for any action
22 taken or omitted within that scope of authority.

23 C. In no event shall any liability of or
24 contractual obligation incurred by the education savings
25 program obligate or encumber any of the state's funds or

1 treasury, including but not limited to the state's general
2 fund, land grant permanent funds, the severance tax permanent
3 fund or any other permanent fund or any money that is a part
4 of a state-funded financial aid program. Nothing in the
5 Education Trust Act creates any obligation, legal, moral or
6 otherwise, to fulfill the terms of any education investment
7 agreement or any other obligation or liability out of any
8 source other than the education trust fund or the program
9 administration fund." _____

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