

HOUSE BILL 342

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

T. Ryan Lane and Peter Wirth

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

"7-2-32. DEDUCTION--PAYMENTS INTO EDUCATION TRUST FUND.--  
A taxpayer may claim a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to [~~a college~~] an education investment agreement or prepaid tuition contract under the Education Trust Act in the taxable year for which the deduction is being claimed. The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the

.224158.3

underscoring material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1 aggregate the cost of attendance at the applicable institution  
2 of higher education, as determined by the education trust  
3 board. [~~A husband and wife~~] Married individuals who file  
4 separate returns for the taxable year in which they could have  
5 filed a joint return may each claim only one-half of the  
6 deduction that would have been allowed on the joint return.  
7 Individuals having income both within and without this state  
8 shall apportion this deduction in accordance with regulations  
9 of the secretary."

10 SECTION 2. Section 21-21K-2 NMSA 1978 (being Laws 2014,  
11 Chapter 76, Section 2) is amended to read:

12 "21-21K-2. DEFINITIONS.--As used in the Education Trust  
13 Act:

14 A. "account" means an individual trust account  
15 pursuant to [~~a college~~] an education investment agreement  
16 entered into pursuant to the [~~college~~] education savings  
17 program;

18 B. "account owner" means the person who has entered  
19 into [~~a college~~] an education investment agreement with the  
20 board and is designated as having the right to withdraw money  
21 from the account before the account is disbursed to or for the  
22 benefit of the beneficiary;

23 C. "beneficiary" means the person who is designated  
24 at the time the account is opened, or the person who replaces a  
25 designated beneficiary, as the person whose qualified higher

.224158.3

underscoring material = new  
[bracketed material] = delete

1 education expenses are expected to be paid from the account;

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

3 E. "~~college~~ education investment agreement" means  
4 an agreement entered into by the board and an account owner to  
5 participate in the ~~college~~ education savings program and  
6 establish an account to be used for the qualified higher  
7 education expenses of a beneficiary ~~[at an eligible institution~~  
8 ~~of higher education]~~;

9 F. "department" means the higher education  
10 department;

11 G. "eligible educational institution" means any  
12 college, university, vocational school or other post-secondary  
13 institution recognized by the United States department of  
14 education;

15 ~~[G.]~~ H. "financial institution" means a bank,  
16 broker-dealer, insurance company, mutual fund, savings and loan  
17 association or other financial entity;

18 ~~[H. "institution of higher education" means a post-~~  
19 ~~secondary educational institution eligible to participate in~~  
20 ~~student financial aid programs administered by the United~~  
21 ~~States department of education;]~~

22 I. "Internal Revenue Code" means the federal  
23 Internal Revenue Code of 1986, as amended; ~~[and]~~

24 J. "manager" means a financial institution under  
25 contract with the board to serve as manager of ~~[a college]~~ an

.224158.3

underscored material = new  
[bracketed material] = delete

1 education savings plan in the [~~college~~] education savings  
2 program and receive contributions on behalf of the program; and

3 K. "qualified higher education expenses" means  
4 federally allowable qualified expenses set out in the Internal  
5 Revenue Code Section 529 and includes other expenses allowed  
6 under that section as qualified education expenses."

7 **SECTION 3.** Section 21-21K-3 NMSA 1978 (being Laws 2014,  
8 Chapter 76, Section 3) is amended to read:

9 "21-21K-3. [~~COLLEGE~~] EDUCATION SAVINGS PROGRAM CREATED--  
10 EDUCATION TRUST FUND CREATED--PURPOSE--INVESTMENT OF ACCOUNTS  
11 BY THIRD PARTIES--BOARD REVIEW--PROGRAM ADMINISTRATION FUND  
12 CREATED--PURPOSE.--

13 A. The "[~~college~~] education savings program" is  
14 created to allow interested persons to enter into [~~college~~]  
15 education investment agreements with the board as a means to  
16 save money to pay a beneficiary's eligible expenses for [~~a~~  
17 ~~college~~] an education. The [~~college~~] education savings program  
18 may consist of one or more [~~college~~] education savings plans.  
19 The board shall administer the [~~college~~] education savings  
20 program through accounts established in the education trust  
21 fund pursuant to [~~college~~] education investment agreements.  
22 Money in an account may be used by the beneficiary [~~at any~~  
23 ~~eligible institution of higher education in New Mexico or any~~  
24 ~~other state~~] for qualified higher education expenses.

25 B. The board shall develop and administer the

underscoring material = new  
~~[bracketed material] = delete~~

1 [college] education savings program in a manner that allows  
2 account owners and beneficiaries to obtain and maintain federal  
3 income tax benefits or treatment provided by the Internal  
4 Revenue Code for qualified [state] tuition programs and  
5 exemptions under the federal securities laws.

6 C. The "education trust fund" is created as a  
7 nonreverting fund in the state treasury. The fund shall be  
8 administered by the board to carry out the [college] education  
9 savings program. The fund consists of separate trust accounts  
10 held in the name of account owners. Income from investment of  
11 the fund shall be credited to the separate accounts.

12 D. The board may contract with one or more managers  
13 to invest the contributions deposited to the education trust  
14 fund. The board and the managers shall account for each  
15 contribution by an account owner.

16 E. Amounts may be withdrawn or transferred from  
17 trust accounts in the education trust fund only as provided in  
18 the related [college] education investment agreements. All  
19 money contributed to accounts established in the fund are held  
20 in trust by the board and the respective managers for the sole  
21 benefit of the respective account owners and beneficiaries.

22 F. The "program administration fund" is created as  
23 a nonreverting fund in the state treasury. The fund consists  
24 of all administrative and other fees received by the board  
25 pursuant to [college] education investment agreements and

.224158.3

underscoring material = new  
[bracketed material] = delete

1 contracts with managers and any other money credited to the  
2 fund. The state treasurer shall invest the fund, and the  
3 investment income shall be credited to the fund. Money in the  
4 fund may be used to pay costs of establishing, marketing and  
5 otherwise administering the [~~college~~] education savings program  
6 in accordance with the Education Trust Act. Disbursements from  
7 the fund shall be by warrants of the secretary of finance and  
8 administration on vouchers signed by the director of the board  
9 or the director's authorized representative."

10 SECTION 4. Section 21-21K-4.1 NMSA 1978 (being Laws 2014,  
11 Chapter 76, Section 5) is amended to read:

12 "21-21K-4.1. BOARD--POWERS AND DUTIES.--

13 A. The board may:

14 (1) adopt, amend or repeal and promulgate  
15 rules necessary to carry out the provisions of the Education  
16 Trust Act;

17 (2) sue and be sued;

18 (3) enter into contracts;

19 (4) employ or contract for professional,  
20 technical and clerical staff and independent counsel;

21 (5) contract with one or more financial  
22 institutions to manage the education trust fund and the  
23 separate trust accounts;

24 (6) enter into [~~college~~] education investment  
25 agreements with interested persons to participate in the

.224158.3

underscored material = new  
[bracketed material] = delete

1 [college] education savings program;

2 (7) charge, impose and collect administrative  
3 fees as provided in [~~a college~~] an education investment  
4 agreement or other contract relating to the [college] education  
5 savings program in amounts not exceeding the reasonable costs  
6 of establishing, marketing and otherwise administering the  
7 program; and

8 (8) do those things necessary or convenient in  
9 accordance with the Education Trust Act to carry out the  
10 provisions of that act.

11 B. The board shall adopt and promulgate education  
12 trust fund investment guidelines and otherwise administer the  
13 [college] education savings program in compliance with the  
14 Uniform Prudent Investor Act."

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

17 "21-21K-5. [~~COLLEGE~~] EDUCATION INVESTMENT AGREEMENTS--  
18 ACCOUNTS.--

19 A. An account owner may enter into [~~a college~~] an  
20 education investment agreement with the board under which an  
21 account in the education trust fund is established and  
22 contributions may be made to the account from time to time,  
23 consistent with the terms of the agreement, to defray the cost  
24 of [~~eligible~~] qualified higher education expenses [~~at~~  
25 ~~institutions of higher education~~]. Each account shall be

.224158.3

underscored material = new  
[bracketed material] = delete

1 accounted for separately from all other accounts in the  
2 education trust fund. An account owner may enter into [~~a~~  
3 ~~college~~] an education investment agreement on behalf of any  
4 beneficiary.

5 B. Gifts and bequests by persons other than the  
6 account owner may be made to an account in the education trust  
7 fund for the benefit of the beneficiary in accordance with the  
8 terms of the [~~college~~] education investment agreement.

9 C. The board shall set forth procedures relating to  
10 the withdrawal of money from an account established in the  
11 education trust fund pursuant to [~~a college~~] an education  
12 investment agreement.

13 D. [~~A college~~] An education investment agreement  
14 may be terminated by the account owner at any time. The board  
15 shall specify by rule appropriate provisions for the term and  
16 termination of [~~college~~] education investment agreements.

17 E. Contributions made to an account in the  
18 education trust fund, together with accrued investment earnings  
19 and capital appreciation in such account, shall be excluded  
20 from any calculation of the respective beneficiary's student  
21 financial aid eligibility in New Mexico.

22 F. The board shall notify each account owner  
23 annually about the status of the account owner's account in the  
24 education trust fund."

25 SECTION 6. Section 21-21K-6 NMSA 1978 (being Laws 2014,

.224158.3

underscoring material = new  
[bracketed material] = delete

1 Chapter 76, Section 7) is amended to read:

2 "21-21K-6. CLAIMS OF CREDITORS--EXEMPTION--LIABILITY  
3 IMMUNITY--STATE NOT LIABLE.--

4 A. Money credited to or expended from any account  
5 in the education trust fund by or on behalf of an account owner  
6 or beneficiary is exempt from all claims of creditors of the  
7 account owner, the beneficiary or the board.

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

18 C. In no event shall any liability of or  
19 contractual obligation incurred by the [~~college~~] education  
20 savings program obligate or encumber any of the state's funds  
21 or treasury, including but not limited to the state's general  
22 fund, land grant permanent funds, the severance tax permanent  
23 fund or any other permanent fund or any money that is a part of  
24 a state-funded financial aid program. Nothing in the Education  
25 Trust Act creates any obligation, legal, moral or otherwise, to

.224158.3

underscoring material = new  
~~[bracketed material] = delete~~

1 fulfill the terms of any [~~college~~] education investment  
2 agreement or any other obligation or liability out of any  
3 source other than the education trust fund or the program  
4 administration fund."

5 - 10 -  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25