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HOUSE BILL 241

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Carl Trujillo and Dennis J. Roch and Rebecca Dow

AN ACT

RELATING TO EDUCATION; CONFORMING THE EDUCATION TRUST ACT TO  
CHANGES MADE IN THE FEDERAL INTERNAL REVENUE CODE OF 1986  
RELATED TO SECTION 529 PROGRAMS.

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

**SECTION 1.** Section 21-21K-2 NMSA 1978 (being Laws 2014,  
Chapter 76, Section 2) is amended to read:

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

A. "account" means an individual trust account  
pursuant to a college investment agreement entered into  
pursuant to the college savings program;

B. "account owner" means the person who has entered  
into a college investment agreement with the board and is  
designated as having the right to withdraw money from the

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1 account before the account is disbursed to or for the benefit  
2 of the beneficiary;

3 C. "beneficiary" means the person who is designated  
4 at the time the account is opened, or the person who replaces a  
5 designated beneficiary, as the person whose education expenses  
6 are expected to be paid from the account;

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

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

14 F. "department" means the higher education  
15 department;

16 G. "eligible educational institution" means an  
17 educational institution eligible to receive payment for  
18 qualified higher education expenses in accordance with Section  
19 529 of the Internal Revenue Code;

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

23 [~~H.~~] "~~institution of higher education~~" means a ~~post-~~  
24 ~~secondary educational institution eligible to participate in~~  
25 ~~student financial aid programs administered by the United~~

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1 ~~States department of education;~~]

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

4 J. "manager" means a financial institution under  
5 contract with the board to serve as manager of a college  
6 savings plan in the college savings program and receive  
7 contributions on behalf of the program; and

8 K. "qualified higher education expenses" means  
9 those expenses allowed under Section 529 of the Internal  
10 Revenue Code."

11 SECTION 2. Section 21-21K-3 NMSA 1978 (being Laws 2014,  
12 Chapter 76, Section 3) is amended to read:

13 "21-21K-3. COLLEGE SAVINGS PROGRAM CREATED--EDUCATION  
14 TRUST FUND CREATED--PURPOSE--INVESTMENT OF ACCOUNTS BY THIRD  
15 PARTIES--BOARD REVIEW--PROGRAM ADMINISTRATION FUND CREATED--  
16 PURPOSE.--

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

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1 beneficiary at any eligible educational institution [~~of higher~~  
2 ~~education~~] in New Mexico or any other state.

3 B. The board shall develop and administer the  
4 college savings program in a manner that allows account owners  
5 and beneficiaries to obtain and maintain federal income tax  
6 benefits or treatment provided by the Internal Revenue Code for  
7 qualified state tuition programs and exemptions under the  
8 federal securities laws.

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

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

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

25 F. The "program administration fund" is created as

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

13 SECTION 3. Section 21-21K-5 NMSA 1978 (being Laws 2014,  
14 Chapter 76, Section 6) is amended to read:

15 "21-21K-5. COLLEGE INVESTMENT AGREEMENTS--ACCOUNTS.--

16 A. An account owner may enter into a college  
17 investment agreement with the board under which an account in  
18 the education trust fund is established, and contributions may  
19 be made to the account from time to time, consistent with the  
20 terms of the agreement, to defray the cost of ~~[eligible]~~  
21 qualified higher education expenses at eligible educational  
22 institutions ~~[of higher education]~~. Each account shall be  
23 accounted for separately from all other accounts in the  
24 education trust fund. An account owner may enter into a  
25 college investment agreement on behalf of any beneficiary.

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1           B. Gifts and bequests by persons other than the  
2 account owner may be made to an account in the education trust  
3 fund for the benefit of the beneficiary in accordance with the  
4 terms of the college investment agreement.

5           C. The board shall set forth procedures relating to  
6 the withdrawal of money from an account established in the  
7 education trust fund pursuant to a college investment  
8 agreement.

9           D. A college investment agreement may be terminated  
10 by the account owner at any time. The board shall specify by  
11 rule appropriate provisions for the term and termination of  
12 college investment agreements.

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

18           F. The board shall notify each account owner  
19 annually about the status of the account owner's account in the  
20 education trust fund."