

SENATE BILL NO. 294

INTRODUCED BY B. USHER, L. SHELDON-GALLOWAY, B. MERCER, J. CARLSON, A. REGIER, E. BUTTREY, L. JONES, J. ESP, T. MANZELLA, J. FULLER, K. KELKER, J. GROSS, J. SMALL, E. BOLDMAN, W. SALES, S. HINEBAUCH, T. MCGILLVRAY, S. FITZPATRICK, P. FLOWERS, R. LYNCH, W. MCKAMEY, M. NOLAND, D. LENZ, D. BARTEL, G. HERTZ, C. FRIEDEL, J. WELBORN, B. GILLESPIE, C. GLIMM, J. ELLSWORTH, K. BOGNER, G. KMETZ, D. ZOLNIKOV, D. EMRICH, J. TREBAS, L. DEMING, T. VERMEIRE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA END OF WATCH TRUST AND PROVIDING RELATED SUPPORTS; CREATING A STATE SPECIAL REVENUE ACCOUNT; CREATING AN OVERSIGHT BOARD THAT IS ATTACHED TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; PROVIDING FOR LOCAL GOVERNMENT AND STATE GOVERNMENT PAYMENTS FOR HEALTH INSURANCE BENEFITS WHEN AN OFFICER IS CATASTROPHICALLY INJURED OR DIES; PROVIDING THAT A BENEFIT RECEIVED FROM THE TRUST IS NOT TAXABLE INCOME; PROVIDING FOR RETROACTIVE PAYMENTS FROM THE TRUST; PROVIDING DEFINITIONS; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 2-18-704, 15-30-2110, AND 15-30-2120, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, Montana law enforcement officers are charged with the enforcement of the laws of the State of Montana as determined by the Montana State Legislature; and

WHEREAS, law enforcement officers put their lives on the line each day to protect the people of Montana; and

WHEREAS, line of duty deaths and catastrophic injuries often leave behind dependent family members who are struggling to cope mentally, emotionally, and financially with the trauma of a line of duty death or to provide care to a catastrophically injured spouse; and

WHEREAS, the State of Montana does not currently provide a line of duty death or catastrophic injury benefit to officers or their families when one of these tragedies occurs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1

2 NEW SECTION. Section 1. Definitions. For the purposes of [sections 1 through 45], the following
3 definitions apply:

4 (1) "Board" means the Montana end of watch trust board established in [section 34].

5 (2) "Catastrophic injury" means an injury directly related to an individual's required employment
6 duties with direct or proximate consequences that renders the individual in need of 24-hour care, permanently
7 incapacitates the individual, and permanently prevents the individual from performing any gainful work.

8 (3) "Department" means the department of justice.

9 (4) "Immediate family" means a law enforcement officer's spouse and dependent children under
10 age 18, including children to whom the law enforcement officer is a legal guardian.

11 (5) "In the line of duty" means an action taken by a law enforcement officer or an activity in which a
12 law enforcement officer participated:

13 (a) as required or authorized by law, rule, regulation, condition of employment, or professional
14 ethics; and

15 (b) for which compensation is provided by the officer's employer or would have been provided by
16 the officer's employer if the officer had been on duty at the time the action in question was taken.

17 (6) "Law enforcement officer" ~~has the same meaning as provided in 7-32-201~~ means:

18 (a) a police officer, deputy sheriff, undersheriff, highway patrol officer, investigator appointed by
19 the department of justice, fish and game warden, park ranger, or other public safety officer certified by the
20 public safety officer standards and training council; or

21 (b) an elected sheriff.

22

23 NEW SECTION. Section 2. Montana end of watch trust ~~benefits~~ ~~responsibilities of board of~~

24 ~~investments~~ ~~responsibilities of department of justice.~~ (1) ~~(a)~~ There is a Montana end of watch trust within
25 the permanent fund type for the purpose of supporting eligible law enforcement officers and their surviving
26 immediate family in the event of an officer's death or catastrophic injury in the line of duty.

27 ~~(b)~~ (2) The department may accept contributions and gifts for the trust in money or other forms. When
28 accepted, the contributions and gifts must be deposited in the trust.

~~(e)(3)~~ The legislature may transfer money to the trust.

~~(d)(4)~~ Interest and income earned on money in the trust must be retained within the trust. The state treasurer shall each month transfer from the trust to the account established in [section 3] the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in [section 3] must be retained in the trust account.

~~(e)(5)~~ The trust is overseen by the board as provided in [section 3]. Money deposited in the fund established under this section must be invested by the board of investments as provided by law.

~~(2)~~ The board of investments shall:

~~(a)~~ manage the trust;

~~(b)~~ report the annual available balance, changes in the trust's earnings, and any other pertinent financial information to the end of watch trust board established in [section 3] and the department by June 30 of each year;

~~(c)~~ reinvest into the trust all interest generated by the trust when there are no eligible recipients during a fiscal year; and

~~(d)~~ allow the department to administer benefits from the interest generated by the trust when there are eligible recipients during a fiscal year.

~~(3)~~ The department shall disburse payments to an officer's designated beneficiary, as indicated by the officer on a form provided by the department.

~~(4)~~ (a) Loss payments for a catastrophic injury or death in the line of duty must be made monthly for 5 calendar years from the date of the injury or death.

~~(b)~~ The minimum monthly payment is \$8,000 and must be increased in accordance with the consumer price index.

~~(5)~~ The money in the account is subject to legislative appropriation.

NEW SECTION. Section 3. Montana end of watch account. (1) There is a Montana end of watch state special revenue account within the state special revenue fund established in 17-2-102 administered by the department of justice. Pursuant to [section 2], all interest and earnings from the trust fund established in

[section 2] must be deposited into this fund.

(2) The department of justice shall disburse payments to an officer's designated beneficiary, as indicated by the officer on a form provided by the department.

(3) (a) Loss payments for a catastrophic injury or death in the line of duty must be made monthly for 5 calendar years from the date of the injury or death.

(b) The minimum monthly payment is \$8,000 and must be increased in accordance with the consumer price index on an annual basis.

(4) The money in the account is subject to legislative appropriation.

NEW SECTION. Section 4. Montana end of watch trust board. (1) There is a volunteer board to oversee the administration of the Montana end of watch trust provided for in [section 2]. The board is attached to the department of justice for administrative purposes only, as provided in 2-15-121.

(2) The board consists of five members appointed by the attorney general, including:

(a) a representative of the Montana sheriffs and peace officers association;

(b) a representative of the Montana police protective association;

(c) a representative of the association of Montana troopers;

(d) a representative of the Montana association of chiefs of police; and

(e) a representative from the department of justice.

(3) The board shall:

(a) meet at least once each fiscal year;

(b) act as an advocate for officers catastrophically injured in the line of duty and the surviving immediate family members of officers who died in the line of duty; and

(c) settle disputes and concerns regarding trust benefits; ~~and~~

~~(d) communicate with the board of investments regarding the money in the trust, including reporting needs.~~

(4) The representatives in subsection (2) must be sworn officers-actors of a participating agency.

NEW SECTION. Section 5. End of watch health insurance support. (1) (a) Local governments that

employ a law enforcement officer as defined in ~~7-32-204~~ [section 1] and provide health insurance benefits to an officer, an officer's spouse, or an officer's dependents shall:

(i) ~~renew the coverage of enroll~~ the officer and the officer's spouse ~~or~~ and dependents in COBRA continuation coverage if the officer is catastrophically injured, as that term is defined in [section 1]; and

(ii) ~~enroll the officer's spouse and dependents in COBRA coverage or if the officer~~ dies in the line of duty as ~~those terms are that term is~~ defined in [section 1].

(b) ~~Renewals of Continuation~~ coverage under this section must provide for the same level of continuation coverage benefits as is available to other members of the group. Premiums charged to an officer, spouse, or dependent under this section must be the same as premiums charged to other similarly situated members of the group.

(c) Dependent special enrollment must be allowed under the terms of the insurance contract or plan.

(d) The provisions of this section are applicable to an officer, spouse, or dependent who is already insured under a COBRA continuation provision.

(2) The law enforcement officer's employing agency shall pay the premium for ~~4-month~~ 4 months after the catastrophic injury or death in the line of duty, after which the officer, spouse, or dependent shall pay the premium.

(3) The benefit plans may discontinue or not renew the coverage of an officer, spouse, or dependent only if:

(a) the officer, spouse, or dependent has failed to pay premiums or contributions for which the individual is responsible;

(b) the officer, spouse, or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(c) the state employee group benefit plans cease to offer coverage in accordance with applicable state law.

Section 6. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must

1 contain provisions that permit:

2 (a) the member of a group who retires from active service under the appropriate retirement
3 provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in
4 Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in
5 covered employment to remain a member of the group until the member becomes eligible for medicare under
6 the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another
7 group plan with substantially the same or greater benefits at an equivalent cost or unless the member is
8 employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the
9 same or greater benefits at an equivalent cost;

10 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is
11 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is
12 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible
13 for equivalent insurance coverage as provided in subsection (1)(a);

14 (c) the surviving children of a member to remain members of the group as long as they are eligible
15 for retirement benefits accrued by the deceased member as provided by law unless they have equivalent
16 coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of
17 a surviving parent or legal guardian.

18 (2) An insurance contract or plan issued under this part must contain the provisions of subsection
19 (1) for remaining a member of the group and also must permit:

20 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

21 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

22 (c) continued membership in the group by anyone eligible under the provisions of this section,
23 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

24 (3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain
25 a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health
26 Insurance for the Aged Act if the legislator:

27 (i) terminates service in the legislature and is a vested member of a state retirement system
28 provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131;

(b) therapies for Down syndrome, as provided in 33-22-139;

(c) treatment for children with hearing loss as provided in 33-22-128(1) and (2);

(d) the care and treatment of mental illness in accordance with the provisions of Title 33, chapter 22, part 7; and

(e) telehealth services, as provided for in 33-22-138.

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the advisory committee on immunization practices of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a \$250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in

1 which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

2 (e) Annual copayment and deductible provisions are subject to the same terms and conditions
3 applicable to all other covered benefits within a given policy.

4 (f) This subsection (12) does not apply to disability income, hospital indemnity, medicare
5 supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the
6 Montana university system as benefits to employees, retirees, and their dependents.

7 (13) (a) The Except as provided in subsection (16), the state employee group benefit plans and the
8 Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace
9 officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a
10 volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace
11 officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment.
12 Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or
13 dependents. Renewals of coverage under this section must provide for the same level of benefits as is
14 available to other members of the group. Premiums charged to a spouse or dependent under this section must
15 be the same as premiums charged to other similarly situated members of the group. Dependent special
16 enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection
17 (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

18 (b) The state employee group benefit plans and the Montana university system group benefits
19 plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or
20 dependent only if:

21 (i) the spouse or dependent has failed to pay premiums or contributions in accordance with the
22 terms of the state employee group benefit plans and the Montana university system group benefits plans or if
23 the plans have not received timely premium payments;

24 (ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made
25 an intentional misrepresentation of a material fact under the terms of the coverage; or

26 (iii) the state employee group benefit plans and the Montana university system group benefits
27 plans are ceasing to offer coverage in accordance with applicable state law.

28 (14) The state employee group benefit plans and the Montana university system group benefits

1 plans must comply with the provisions of 33-22-153.

2 (15) An insurance contract or plan issued under this part and a group benefits plan issued by the
3 Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter
4 22, part 7. (See compiler's comments for contingent termination of certain text.)

5 (16) (a) The state employee group benefit plans that provide coverage to a law enforcement officer
6 as defined in ~~7-32-201 [section 1]~~ or the spouse or dependents of a law enforcement officer shall:

7 (i) ~~renew the coverage of enroll~~ the officer and the officer's spouse or dependents in COBRA
8 continuation coverage if the officer is catastrophically injured ~~or dies~~ in the line of duty as ~~those terms are that~~
9 term is defined in [section 1], unless the officer is eligible for benefits as provided in 44-1-511; or

10 (ii) enroll the officer's spouse or dependents in COBRA continuation coverage if the officer dies in
11 the line of duty as that term is defined in [section 1].

12 (b) Renewals of coverage under this section must provide for the same level of benefits as is
13 available to other members of the group. Premiums charged to an officer, spouse, or dependent under this
14 subsection (16) must be the same as premiums charged to other similarly situated members of the group.
15 Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The
16 provisions of this subsection (16) are applicable to an officer, spouse, or dependent who is insured under a
17 COBRA continuation provision.

18 (b)(c) The state shall pay the premium for ~~1 month~~ 4 months of COBRA coverage after the
19 catastrophic injury or death in the line of duty, after which the officer, spouse, or dependent shall pay the
20 premium.

21 (e)(d) The state employee group benefit plans may discontinue or not renew the coverage of an
22 officer, spouse, or dependent only if:

23 (i) the officer, spouse, or dependent has failed to pay premiums or contributions for which the
24 individual is responsible;

25 (ii) the officer, spouse, or dependent has performed an act or practice that constitutes fraud or has
26 made an intentional misrepresentation of a material fact under the terms of the coverage; or

27 (iii) the state employee group benefit plans cease to offer coverage in accordance with applicable
28 state law."

1

2 **Section 7.** Section 15-30-2110, MCA, is amended to read:

3 **"15-30-2110. (Temporary) Adjusted gross income.** (1) Subject to subsection (15), adjusted gross
4 income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code,
5 26 U.S.C. 62, and in addition includes the following:

6 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or
7 other political subdivision of another state, except to the extent that the interest is exempt from taxation by
8 Montana under federal law;

9 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26
10 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

11 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
12 reduction of Montana income tax liability as determined under subsection (16);

13 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal
14 Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the
15 income;

16 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

17 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that
18 the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

19 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable
20 distribution of the same estate or trust, the difference between the state taxable distribution and the federal
21 taxable distribution of the same estate or trust for the same tax period; and

22 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any
23 dividend to the extent that the dividend is not included in federal adjusted gross income.

24 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
25 include the following, which are exempt from taxation under this chapter:

26 (a) (i) all interest income from obligations of the United States government, the state of Montana,
27 or a county, municipality, district, or other political subdivision of the state and any other interest income that is
28 exempt from taxation by Montana under federal law;

- (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);
- (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (17), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;
- (ii) subject to subsection (17), for pension and annuity income described under subsection (2)(c)(i), as follows:
- (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return;
- (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on their joint return;
- (d) all Montana income tax refunds or tax refund credits;
- (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;
- (g) all benefits received under the workers' compensation laws;
- (h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;
- (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- (j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

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Drafter: Milly Allen, 406-444-9280

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care savings account inherited by an immediate family member as provided in 15-61-202(6);

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from an account established under the Montana family education savings program, Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163;

(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104; ~~and~~

(t) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1; and

(u) loss payments from the Montana end of watch trust as provided in [section 2].

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses

1 according to the federal passive activity rules for married taxpayers filing separately under section 469 of the
2 Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the
3 loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

4 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed
5 a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
6 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
7 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

8 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid
9 for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file
10 separate Montana income tax returns may claim the same amount of the deduction that is allowed on the
11 federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of
12 federal adjusted gross income.

13 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition
14 and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate
15 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
16 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
17 gross income.

18 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the
19 end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross
20 income up to \$100 a week received as wages or payments in lieu of wages for a period during which the
21 employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds
22 \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion,
23 but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion
24 separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their
25 combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means
26 unable to engage in any substantial gainful activity by reason of any medically determined physical or mental
27 impairment lasting or expected to last at least 12 months.

28 (11) (a) An individual who contributes to one or more accounts established under the Montana

family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or

1 population, or a federal nursing shortage county as determined by the secretary of health and human services
2 or by the governor;

3 (iii) has had a student loan incurred as a result of health-related education; and

4 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan
5 repayment program described in subsection (13)(b) as an incentive to practice in Montana.

6 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or
7 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
8 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
9 as a licensed health care professional.

10 (14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year
11 pursuant to Title 20, chapter 4, part 5, not to exceed \$5,000, from the taxpayer's adjusted gross income.

12 (15) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40%
13 of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
14 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

15 (16) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the
16 following order as applicable:

17 (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that
18 prior tax year;

19 (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior
20 tax year but did not result in a reduction in state income tax liability in that prior tax year; and

21 (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior
22 tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

23 (17) By November 1 of each year, the department shall multiply the amount of pension and annuity
24 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
25 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
26 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
27 (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021; subsection (2)(f) terminates on
28 occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of

contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017; subsection (2)(s) terminates December 31, 2029--sec. 20, Ch. 480, L. 2021.)"

Section 8. Section 15-30-2120, MCA, is amended to read:

"15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income. (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(c) depreciation or amortization taken on a title plant as defined in 33-25-105;

(d) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A

1 of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction
2 claimed; and

3 (j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal
4 Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not
5 to exceed the amount required to reduce the federal itemized amount computed under section 161 of the
6 Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under
7 section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

8 (3) To the extent they are included as income or gain or not already excluded as a deduction or
9 expense in determining federal taxable income, the following are subtracted from federal taxable income:

10 (a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance
11 with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the
12 additions and subtractions in subsections (2) and (3)(b) through (3)(m);

13 (b) if exempt from taxation by Montana under federal law:

14 (i) interest from obligations of the United States government and exempt-interest dividends
15 attributable to that interest; and

16 (ii) railroad retirement benefits;

17 (c) (i) salary received from the armed forces by residents of Montana who are serving on active
18 duty in the regular armed forces and who entered into active duty from Montana;

19 (ii) the salary received by residents of Montana for active duty in the national guard. For the
20 purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national
21 guard member pursuant to:

22 (A) Title 10, U.S.C.; or

23 (B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency
24 operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland
25 defense activity or contingency operation.

26 (iii) the amount received pursuant to 10-1-1114 or from the federal government by a service
27 member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

28 (iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of \$5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

(k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing

federal taxable income; ~~and~~

(m) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163; and

(n) loss payments from the Montana end of watch trust as provided in [section 2].

(4) (a) A taxpayer who, in determining federal taxable income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (5)(a) applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in taxable income under this subsection (6)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest \$10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g)."

NEW SECTION. Section 9. Unfunded mandate laws superseded. The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

NEW SECTION. Section 10. Effective date. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Section 78] is effective January 1, 2024.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 45] are intended to be codified as an integral part of Title 2, chapter 15, section 20, and the provisions of Title 2, chapter 15, section 20, apply to [sections 1 through 45].

NEW SECTION. Section 12. Retroactive applicability. (1) [This act] applies retroactively, within the

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

- 2023

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Drafter: Milly Allen, 406-444-9280

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1 meaning of 1-2-109, to designated beneficiaries eligible for loss payments from the Montana end of watch trust
2 pursuant to [section 2(3)] on or after July 1, 2013.

3 (2) Retroactive payments allowed in subsection (1) must be made for 5 years from July 1, 2023.

4 - END -