

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 177, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE COLLEGE SAVINGS PROGRAM; AMENDING SECTION 33-5401, IDAHO
2 CODE, TO REVISE A DEFINITION; AMENDING SECTION 33-5402, IDAHO CODE, TO
3 REVISE THE POWERS AND DUTIES OF THE COLLEGE SAVINGS PROGRAM BOARD AND
4 TO PROVIDE FOR CERTAIN POWERS AND DUTIES; AMENDING SECTION 33-5403,
5 IDAHO CODE, TO REMOVE CERTAIN PROVISIONS RELATING TO THE USE OF A CON-
6 TRACTOR AS ACCOUNT DEPOSITORY AND MANAGER AND THE ADMINISTRATION OF THE
7 PROGRAM, TO PROVIDE FOR THE ADMINISTRATION AND IMPLEMENTATION OF THE
8 PROGRAM AND TO PROVIDE FOR THE DELEGATION OF CERTAIN POWERS AND DUTIES;
9 AMENDING SECTION 33-5404, IDAHO CODE, TO PROVIDE THAT THE PROGRAM SHALL
10 BE OPERATED THROUGH THE USE OF INDIVIDUAL ACCOUNTS, TO PROVIDE THAT EACH
11 ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES TO SAVE FOR THE QUALIFIED
12 HIGHER EDUCATION EXPENSES OF A PERSON, TO REMOVE PROVISIONS RELATING
13 TO THE PROCEDURE TO BE FOLLOWED IN THE EVENT THE BOARD TERMINATES CER-
14 TAIN AUTHORITY OF A FINANCIAL INSTITUTION RELATING TO THE PROGRAM, TO
15 PROVIDE FOR THE TRANSFER OF ACCOUNTS, TO CLARIFY THE EFFECT OF SUCH
16 TRANSFER, TO PROVIDE THAT THE PROGRAM SHALL PROVIDE CERTAIN STATEMENTS
17 TO EACH ACCOUNT OWNER AND TO MAKE A TECHNICAL CORRECTION; AND AMEND-
18 ING SECTION 33-5409, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR
19 CONTINUOUS APPROPRIATION OF CERTAIN MONEYS TO THE BOARD AND TO REVISE
20 PROVISIONS RELATING TO THE USE OF MONEYS IN THE COLLEGE SAVINGS FUND.
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. That Section 33-5401, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 33-5401. DEFINITIONS. As used in this chapter, the following terms
26 have the following meanings unless the context clearly denotes otherwise:

27 (1) "Account" means an individual trust account or savings account es-
28 tablished as prescribed in this chapter.

29 (2) "Account owner" means the person or state or local government or-
30 ganization designated in the agreement governing the account as having the
31 right to withdraw moneys from the account before the account is disbursed to
32 or for the benefit of the designated beneficiary.

33 (3) "Board" means the state college savings program board created in
34 section 33-5402, Idaho Code.

35 (4) "Designated beneficiary," except as provided in section 33-5404,
36 Idaho Code, means, with respect to an account, the individual designated at
37 the time the account is opened as the individual whose higher education ex-
38 penses are expected to be paid from the account or, if this designated bene-
39 ficiary is replaced in accordance with section 33-5404, Idaho Code, the re-
40 placement beneficiary.

41 (5) "Eligible educational institution" shall have the meaning provided
42 in 26 U.S.C. section 529.

1 (6) "Financial institution" means any state bank, national bank, sav-
 2 ings bank, savings and loan association, credit union, insurance company,
 3 brokerage firm, trust company, mutual fund, investment firm or other similar
 4 entity that is authorized to do business in this state.

5 (7) "Member of the family" shall have the meaning as provided in 26
 6 U.S.C. section 529.

7 (8) "Nonqualified withdrawal" means an account withdrawal that is not
 8 one (1) of the following:

9 (a) A qualified withdrawal;

10 (b) A withdrawal made as the result of the death or disability of the
 11 designated beneficiary of an account;

12 (c) A withdrawal that is made on account of a scholarship as defined
 13 in 26 U.S.C. section 117 or an educational allowance as defined in 26
 14 U.S.C. section 25A(g) (2);

15 (d) A rollover or change of the designated beneficiary.

16 (9) "Person" means an individual, a trust, an estate, a partnership,
 17 an association, a foundation, a guardianship, a corporation, or a custodian
 18 under the Idaho uniform transfers to minors act.

19 (10) "Program" means the college savings program established under this
 20 chapter.

21 (11) "Qualified higher education expenses" shall have the meaning pro-
 22 vided in 26 U.S.C. section 529(e) (3).

23 (12) "Qualified withdrawal" means a withdrawal from an account to pay
 24 the qualified higher education expenses of the designated beneficiary of the
 25 account, but only if the withdrawal is made in accordance with this chapter.

26 SECTION 2. That Section 33-5402, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 33-5402. STATE COLLEGE SAVINGS PROGRAM BOARD -- COLLEGE SAVINGS PRO-
 29 GRAM -- POWERS AND DUTIES. There is hereby created the state college sav-
 30 ings program board. The board shall consist of the state treasurer or his
 31 designee who shall serve as chair, the governor or designee, the state con-
 32 troller or designee, the attorney general or designee, the superintendent of
 33 public instruction or designee, and the secretary of state or designee. A
 34 quorum shall be necessary to transact business. Members of the board shall
 35 be compensated by their appointing entity. The state college savings pro-
 36 gram board shall:

37 (1) Develop and implement the program in a manner consistent with this
 38 chapter through the adoption of rules, guidelines and procedures;

39 (2) Retain professional services, if necessary, including accoun-
 40 tants, auditors, consultants and other experts;

41 (3) Seek rulings and other guidance from the United States department
 42 of the treasury, the internal revenue service and the state tax commission
 43 relating to the program;

44 (4) Make changes to the program required for the participants in the
 45 program to obtain the federal income tax benefits or treatment provided by
 46 section 529 of the Internal Revenue Code of 1986, as amended;

47 (5) Interpret, in rules, policies, guidelines and procedures, the pro-
 48 visions of this chapter broadly in light of its purpose and objectives;

1 (6) Charge, impose and collect administrative fees and service charges
 2 in connection with any agreement, contract or transaction relating to the
 3 program;

4 (7) ~~Select the financial institution or institutions to act as the de-~~
 5 ~~pository depositories and act as or select managers~~ of the program in accor-
 6 dance with this chapter;

7 (8) Enter into contracts, within the limit of funds available therefor,
 8 acquire services and personal property, and do and perform any acts that may
 9 be necessary in the administration of the program. As a board comprised of
 10 elected officials, the board shall be exempt from the provisions of the pro-
 11 urement statutes and shall not be an agency as defined in section 67-5716,
 12 Idaho Code;

13 (9) Establish, in its discretion, a trust or other method of segregat-
 14 ing the funds of participants in the program from the general funds of the
 15 state, the funds of the board and the funds of the members of the board;

16 (10) Administer the program and any trust established by the board as
 17 instrumentalities of the state under section 529 of the Internal Revenue
 18 Code of 1986, as amended, and the federal securities law, including the secu-
 19 rities act of 1933, as amended, the trust indenture act of 1939, as amended,
 20 and the investment company act of 1940, as amended;

21 (11) Employ and at its pleasure discharge an executive director and
 22 such other employees necessary in the administration of the program. Em-
 23 ployees of the board shall be nonclassified exempt employees pursuant to the
 24 provisions of chapter 53, title 67, Idaho Code.

25 SECTION 3. That Section 33-5403, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 33-5403. ~~USE OF CONTRACTOR AS ACCOUNT DEPOSITORY AND MANAGER~~
 28 ~~ADMINISTRATION OF THE PROGRAM.~~ (1) The board shall implement the program
 29 through ~~the use of its staff, agreements with one (1) or more financial in-~~
 30 ~~stitutions engaged to act as the program's depositories and managers, or~~
 31 ~~through agreements with any public entity or agency, including depository,~~
 32 ~~investment or management relationships with other 529 plans or entities.~~
 33 ~~Under the program, persons may establish accounts through the program at the~~
 34 ~~depository.~~

35 (2) The board shall ~~solicit proposals from financial institutions to~~
 36 ~~act as the depositories and managers of~~ implement the program. ~~Financial~~
 37 ~~institutions that submit proposals must describe the financial instruments~~
 38 ~~that will be held in accounts and manage any trust established by the board~~
 39 ~~consistent with sound financial principles and to obtain the federal income~~
 40 ~~tax benefits or treatment provided by section 529 of the Internal Revenue~~
 41 ~~Code of 1986, as amended.~~

42 (3) ~~The board shall select as program depositories and managers the Any~~
 43 ~~financial institution or institutions from among bidding financial insti-~~
 44 ~~tutions that demonstrate the most advantageous combination, both to poten-~~
 45 ~~tial program participants and engaged by the board shall hold each account in~~
 46 ~~trust for the benefit of this state, of the following factors:~~

47 ~~(a) Financial stability and integrity;~~

48 ~~(b) The safety of the investment instruments being offered, taking into~~
 49 ~~account any insurance provided with respect to these instruments;~~

1 ~~(c) The ability of the investment instruments to track estimated costs~~
 2 ~~of higher education as calculated by the board and provided by the fi-~~
 3 ~~ancial institution to the account holder;~~

4 ~~(d) The ability of the financial institutions, directly or through a~~
 5 ~~subcontract, to satisfy recordkeeping and reporting requirements;~~

6 ~~(e) The financial institution's plan for promoting the program and the~~
 7 ~~investment it is willing to make to promote the program;~~

8 ~~(f) The fees, if any, proposed to be charged to persons for maintaining~~
 9 ~~accounts;~~

10 ~~(g) The minimum initial deposit and minimum contributions that the fi-~~
 11 ~~ancial institution will require and the willingness of the financial~~
 12 ~~institution to accept contributions through payroll deduction plans~~
 13 ~~and other deposit plans;~~

14 ~~(h) Any other benefits to this state or its residents included in the~~
 15 ~~proposal, including an account opening fee payable to the board by and~~
 16 ~~the account owner and an additional fee from the financial institution~~
 17 ~~for statewide program marketing by the board.~~

18 (4) ~~The board shall enter into a contract with a financial institution~~
 19 ~~or, except as provided in subsection (5) of this section, contracts with fi-~~
 20 ~~ancial institutions, to serve as program managers and depositories may del-~~
 21 ~~egate to the office of a board member any of its administrative powers and~~
 22 ~~duties, if the board determines that such delegation is necessary for the ef-~~
 23 ~~icient and effective administration of the program and the board member ac-~~
 24 ~~cepts the delegation. Administrative powers and duties include payroll pro-~~
 25 ~~cessing, routine public contacts and public records maintenance. The board~~
 26 ~~member shall be compensated for administrative activities pursuant to sec-~~
 27 ~~tion 33-5409, Idaho Code.~~

28 ~~(5) The board may select more than one (1) financial institution and in-~~
 29 ~~vestment for the program if both of the following conditions exist:~~

30 ~~(a) The United States internal revenue service has provided guidance~~
 31 ~~that giving a contributor a choice of two (2) investment instruments un-~~
 32 ~~der a state plan will not cause the plan to fail to qualify for favorable~~
 33 ~~tax treatment under section 529 of the Internal Revenue Code;~~

34 ~~(b) The board concludes that the choice of instrument vehicles is in the~~
 35 ~~best interest of college savers and will not interfere with the promo-~~
 36 ~~tion of the program.~~

37 ~~(6) A program manager shall:~~

38 ~~(a) Take all action required to keep the program in compliance with the~~
 39 ~~requirements of this chapter and all action not contrary to this chapter~~
 40 ~~or its contract to manage the program so that it is treated as a quali-~~
 41 ~~fied state tuition plan under section 529 of the Internal Revenue Code;~~

42 ~~(b) Keep adequate records of each account, keep each account segregated~~
 43 ~~from each other account and provide the board with the information nec-~~
 44 ~~essary to prepare statements required by section 33-5404, Idaho Code,~~
 45 ~~or file these statements on behalf of the board;~~

46 ~~(c) Compile and total information contained in statements required to~~
 47 ~~be prepared under section 33-5404, Idaho Code, and provide these compi-~~
 48 ~~lations to the board;~~

1 ~~(d) If there is more than one (1) program manager, provide the board~~
 2 ~~with this information to assist the board to determine compliance with~~
 3 ~~section 33-5404, Idaho Code;~~

4 ~~(e) Provide representatives of the board, including other contractors~~
 5 ~~or other state agencies, access to the books and records of the program~~
 6 ~~manager to the extent needed to determine compliance with the contract;~~

7 ~~(f) Hold all accounts in trust for the benefit of this state and the ac-~~
 8 ~~count owner.~~

9 ~~(7) Any contract executed between the board and a financial institution~~
 10 ~~pursuant to this section shall be for a term not to exceed ten (10) years.~~

11 ~~(8) If a contract executed between the board and a financial institu-~~
 12 ~~tion pursuant to this section is not renewed, all of the following conditions~~
 13 ~~apply at the end of the term of the nonrenewed contract:~~

14 ~~(a) Accounts previously established and held in investment instruments~~
 15 ~~at the financial institution shall not be terminated;~~

16 ~~(b) Additional contributions may be made to the accounts;~~

17 ~~(c) No new accounts may be placed with that financial institution.~~

18 ~~(9) The board may terminate a contract with a financial institution at~~
 19 ~~any time for good cause on the recommendation of the board. If a contract is~~
 20 ~~terminated pursuant to this subsection, the board shall take custody of ac-~~
 21 ~~counts held at that financial institution and shall seek to promptly trans-~~
 22 ~~fer the accounts to another financial institution that is selected as a pro-~~
 23 ~~gram manager and into investment instruments as similar to the original in-~~
 24 ~~vestments as is possible.~~

25 SECTION 4. That Section 33-5404, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 33-5404. PROGRAM REQUIREMENTS. (1) The program shall be operated
 28 through the use of individual accounts. ~~An~~ Each account may be opened by any
 29 person who desires to save to pay for the qualified higher education expenses
 30 of a person. Minors may open an account which cannot be disaffirmed pursuant
 31 to section 32-103, Idaho Code. A person may open an account by satisfying
 32 each of the following requirements:

33 (a) Completing an application in the form prescribed by the board. The
 34 application shall include the following information:

35 (i) The name, address and social security number or employer
 36 identification number of the contributor;

37 (ii) The name, address and social security number of the account
 38 owner if the account owner is not the contributor;

39 (iii) The name, address and social security number of the desig-
 40 nated beneficiary;

41 (iv) The certification relating to no excess contributions re-
 42 quired by subsection (13) of this section;

43 (v) Any other information that the board may require;

44 (b) Paying the one-time application fee established by the board;

45 (c) Making the minimum contribution required by the board or by opening
 46 an account;

47 (d) Designating the type of account to be opened if more than one (1)
 48 type of account is offered.

1 (2) Any person may make contributions to an account after the account is
2 opened.

3 (3) Contributions to accounts may be made only in cash.

4 (4) Account owners may withdraw all or part of the balance from an ac-
5 count on sixty (60) days' notice, or a shorter period as may be authorized by
6 the board, under rules prescribed by the board.

7 (5) An account owner may change the designated beneficiary of an ac-
8 count to an individual who is a member of the family of the former designated
9 beneficiary in accordance with procedures established by the board.

10 (6) On the direction of an account owner, all or a portion of an account
11 may be transferred to another account of which the designated beneficiary is
12 a member of the family of the designated beneficiary of the transferee ac-
13 count.

14 (7) Changes in designated beneficiaries and rollovers under this sec-
15 tion are not permitted if the changes or rollovers would violate either of
16 the following provisions of this section relating to excess contributions or
17 to investment choice.

18 (8) Each account shall be maintained separately from each other account
19 under the program.

20 (9) Separate records and accounting shall be maintained for each ac-
21 count for each designated beneficiary.

22 (10) No contributor to, account owner of or designated beneficiary of
23 any account may direct the investment of any contributions to an account or
24 the earnings from the account.

25 ~~(11) If the board terminates the authority of a financial institution to~~
26 ~~hold accounts and accounts must be moved from that financial institution to~~
27 ~~another financial institution, the board shall select the financial insti-~~
28 ~~tution and type of investment to which the balance of the account is moved~~
29 ~~unless the internal revenue service provides guidance stating that allowing~~
30 ~~the account owner to select among several financial institutions that are~~
31 ~~current contractors would not cause a plan to cease to be a qualified tuition~~
32 ~~program~~ The board may transfer accounts held by a depository or manager to
33 a successor depository or manager; provided however, that the transfer to a
34 successor depository or manager does not cause the plan to cease to be a qual-
35 ified tuition program or subject individual accounts to taxes or penalties.

36 (12) Neither an account owner nor a designated beneficiary may use an
37 interest in an account as security for a loan. Any pledge of an interest in an
38 account is of no force and effect.

39 (13) The board shall adopt rules to prevent contributions on behalf of
40 a designated beneficiary in excess of those necessary to pay the qualified
41 higher education expenses of the designated beneficiaries. The rules shall
42 address the following:

43 (a) Procedures for aggregating the total balances of multiple accounts
44 established for a designated beneficiary;

45 (b) The establishment of a maximum total balance that may be held in ac-
46 counts for a designated beneficiary;

47 (c) The board shall review the quarterly reports received from partici-
48 pating financial institutions and certify that the balance in all qual-
49 ified tuition programs, as defined in section 529 of the Internal Rev-

1 enue Code, of which that person is the designated beneficiary does not
2 exceed the lesser of:

3 (i) A maximum college savings amount established by the board from
4 time to time; or

5 (ii) The cost in current dollars of qualified higher education ex-
6 penses that the contributor reasonably anticipates the designated
7 beneficiary will incur;

8 (d) Requirements that any excess balances with respect to a desig-
9 nated beneficiary be promptly withdrawn in a nonqualified withdrawal or
10 rolled over to another account in accordance with this section.

11 (14) If there is any distribution from an account to any person or for
12 the benefit of any person during a calendar year, the distribution shall be
13 reported to the internal revenue service and the account owner or the desig-
14 nated beneficiary to the extent required by federal law.

15 (15) The ~~financial institution~~ program shall provide statements to each
16 account owner at least once each year within thirty-one (31) days after the
17 twelve (12) month period to which they relate. The statement shall identify
18 the contributions made during a preceding twelve (12) month period, the to-
19 tal contributions made through the end of the period, the value of the ac-
20 count as of the end of this period, distributions made during this period and
21 any other matters that the board requires be reported to the account owner.

22 (16) Statements and information returns relating to accounts shall be
23 prepared and filed to the extent required by federal or state tax law.

24 (17) A state or local government or organization described in section
25 501(c) (3) of the Internal Revenue Code may open and become the account owner
26 of an account to fund scholarships for persons whose identity will be deter-
27 mined after an account is opened.

28 (18) In the case of any account described in subsection (17) of this sec-
29 tion, the requirement that a designated beneficiary be designated when an
30 account is opened does not apply and each person who receives an interest
31 in the account as a scholarship shall be treated as a designated beneficiary
32 with respect to the interest.

33 (19) Any social security numbers, addresses or telephone numbers of
34 individual account holders and designated beneficiaries that come into the
35 possession of the board are confidential, are not public records and shall
36 not be released by the board.

37 SECTION 5. That Section 33-5409, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 33-5409. COLLEGE SAVINGS FUND. (1) There is hereby created in the
40 state treasury the "College Savings Fund" to which shall be credited:

41 (a) Administrative fees and service charges in connection with any
42 agreement, contract or transaction related to the college savings pro-
43 gram;

44 (b) Fees and charges collected to cover costs associated with the pow-
45 ers and duties of the ~~state college savings~~ board as required in section
46 33-5402, Idaho Code;

47 (c) Interest earned on the investment of idle moneys in the fund, which
48 shall be paid to the fund; and

49 (d) All other moneys as may be provided by law.

1 (2) Moneys in the fund shall be continuously appropriated to the
2 ~~treasurer of the state of Idaho~~ board, and any moneys remaining in the fund at
3 the end of each fiscal year shall not be appropriated to any other fund.

4 (3) Moneys in the fund shall only be used to effect the purposes of
5 this chapter, pursuant to the provisions as prescribed herein, ~~provided~~
6 ~~however, t~~The office of ~~the state treasurer~~ a board member is authorized to
7 ~~retain~~ receive a portion of the moneys ~~not to exceed one-half of one percent~~
8 ~~(0.5%) of the fund's annual revenues~~ approved by the board to defray costs
9 associated with the implementation, administration and oversight of the
10 college savings program, including the administrative activities delegated
11 pursuant to section 33-5403, Idaho Code.