

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1469 Session of
1999

INTRODUCED BY STETLER, COLAFELLA, NICKOL, ARGALL, BATTISTO,
BELFANTI, BISHOP, CARN, M. COHEN, COY, CURRY, DeWEESE,
EACHUS, FRANKEL, FREEMAN, GEORGE, GORDNER, GRUCELIA, HALUSKA,
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TANGRETTI, J. TAYLOR, TIGUE, TRELLIO, TRICH, VEON, WALKO,
WASHINGTON, WILLIAMS, YEWCIC AND YOUNGBLOOD, MAY 6, 1999

REFERRED TO COMMITTEE ON EDUCATION, MAY 6, 1999

AN ACT

1 Creating the College Opportunity Savings Program; creating the
2 Board of Managers of the College Opportunity Savings Program;
3 and making an appropriation.

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20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Short title.

23 This act shall be known and may be cited as the College
24 Opportunity Act.

25 Section 2. Legislative findings.

26 The General Assembly finds that:

27 (1) The cost of higher education continues to pose a
28 substantial economic burden on the working families of
29 Pennsylvania.

30 (2) Although the Commonwealth has already implemented

1 programs to aid students and their families bear the cost of
2 higher education, including the grant and loan programs
3 offered through the Pennsylvania Higher Education Assistance
4 Agency, the Tuition Assistance Program and the College
5 Savings Bond Program, there is a public interest in further
6 expanding opportunities to aid students and their families.

7 (3) Changes in Federal law have provided additional
8 incentives and opportunities to assist families in setting
9 aside funds to cover the cost of college tuition.

10 (4) In order to assist families in paying the costs of
11 higher education, it is reasonable and appropriate for the
12 Commonwealth to offer incentives to encourage families,
13 particularly those less likely to do so, to set aside funds
14 for such purposes.

15 (5) The matching contributions provided under this act
16 qualify as an appropriate expenditure of public funds
17 pursuant to section 29 of Article III, of the Constitution of
18 Pennsylvania.

19 Section 3. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 "Account owner." The individual who enters into a tuition
24 savings agreement pursuant to the provisions of this act. The
25 account owner may also be the designated beneficiary of the
26 account.

27 "Agency." The Pennsylvania Higher Education Assistance
28 Agency.

29 "Board." The Board of Managers of the College Opportunity
30 Savings Program, created under this act.

1 "Department of State." The Department of State of this
2 Commonwealth.

3 "Designated beneficiary." The individual designated by the
4 account owner as the person whose higher education expenses are
5 expected to be paid from the tuition account.

6 "Family member." A family member as defined in section 529
7 of the Internal Revenue Code of 1986 (Public Law 99-514, 26
8 U.S.C. § 1 et seq.).

9 "Financial organization." An organization authorized to do
10 business in this Commonwealth that is authorized to act as a
11 trustee pursuant to the provisions of the Federal Employee
12 Retirement Income Security Act of 1974 (ERISA) (Public Law 93-
13 406, 88 Stat. 829) or an insurance company and at least one of
14 the following:

15 (1) is licensed or chartered by the Insurance
16 Department;

17 (2) is licensed or chartered by the Department of
18 Banking;

19 (3) is chartered by an agency of the Federal Government;
20 or

21 (4) is subject to the jurisdiction of the Federal
22 Securities and Exchange Commission.

23 "Institutions of higher education." Any college or
24 university or other institution of higher education approved by
25 the Pennsylvania Higher Education Assistance Agency for State
26 grant purposes, whether or not that institution is located in a
27 state which has grant reciprocity with Pennsylvania.

28 "Internal Revenue Code." The Internal Revenue Code of 1986
29 (Public Law 99-514, 26 U.S.C. § 1 set seq.) or its Federal
30 successor statute.

1 "Management contract." The contract executed between the
2 board and the financial organization selected to act as the
3 program manager and depository for the opportunities program.

4 "Nonqualified withdrawal." A withdrawal from an account
5 which is not:

- 6 (1) a qualified withdrawal;
- 7 (2) a withdrawal made as the result of the death or
8 disability of a designated beneficiary of an account; or
9 (3) a withdrawal made on account of a scholarship.

10 "Program." The College Opportunity Savings Program created
11 under this act.

12 "Qualified higher education expenses." Any higher education
13 expense that qualifies under section 529 of the Internal Revenue
14 Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

15 "Qualified withdrawal." A withdrawal from an account to pay
16 the qualified higher education expenses of the designated
17 beneficiary of the account.

18 "Section 529 of the Internal Revenue Code." Section 529 of
19 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
20 § 1 et seq.).

21 "Tuition account." An individual savings account established
22 in accordance with the provisions of this act.

23 "Tuition opportunities agreement." An agreement between the
24 board or the program manager and an account owner.

25 Section 4. Program created.

26 The College Opportunity Savings Program is created. It shall
27 be administered by a board of managers in accordance with the
28 provisions of this act.

29 Section 5. Board created.

30 (a) Creation.--A Board of Managers for the College

1 Opportunity Program is hereby created.

2 (b) Members.--The board shall be composed of:

3 (1) Four members of the General Assembly, one appointed
4 by the leader of each legislative caucus. The legislative
5 members shall also be members of the Board of the
6 Pennsylvania Higher Education Assistance Agency.

7 (2) The State Treasurer.

8 (3) The Auditor General.

9 (4) The Secretary of Education.

10 (c) Chairman.--The chairmanship of the board shall be
11 selected from the four legislative members.

12 (d) Vice chairman.--The State Treasurer shall be the vice
13 chairman.

14 (e) Staff.--Staff for the board shall be provided by the
15 agency and by the Office of the State Treasurer.

16 (f) Meetings.--The board shall meet at least quarterly.

17 Section 6. Powers and duties of board.

18 The board shall have the power and its duty shall be to:

19 (1) Implement and operate the program established under
20 this act and may develop forms, materials, rules and
21 procedures as it deems necessary.

22 (2) Solicit proposals from and enter into a management
23 contract with a qualified financial organization to manage
24 the opportunities program, including to serve as a depository
25 for tuition accounts.

26 (3) Engage such consultants and enter into such
27 contracts as may be necessary to successfully operate the
28 opportunities program.

29 (4) Seek rulings and guidance from the United States
30 Department of the Treasury and the Internal Revenue Service

1 as may be necessary to operate the program.

2 (5) Make changes to the program as necessary to allow
3 account owners and designated beneficiaries to obtain the
4 Federal income tax benefits or treatment provided by section
5 529 of the Internal Revenue Code.

6 (6) Impose and collect administrative fees and service
7 charges in connection with any agreement, contract or
8 transaction relating to the program.

9 (7) Establish by rule a reasonable period for account
10 owners to provide notice to withdraw all or part of the
11 balance of an account.

12 (8) Develop and distribute marketing and promotional
13 material.

14 (9) Develop the mechanisms necessary to provide account
15 information to account owners and to permit dispersal of
16 funds from tuition accounts.

17 (10) Adjust the maximum total and annual contribution to
18 allow for the growth in college tuition costs, but the
19 maximum total contribution shall not exceed an amount equal
20 to four times the annual average cost for tuition and fees
21 for private colleges and universities located within this
22 Commonwealth, as certified by the agency.

23 (11) Enter into agreements with the agency and the
24 Office of the State Treasurer for the services and staff
25 necessary to fulfill the purposes of this act. Services and
26 staff shall be provided to the board free of costs.

27 (12) Do all things necessary and proper to carry out the
28 purposes of this act.

29 Section 7. Qualifications of program manager.

30 The board may contract with a fiduciary to manage the

1 program. The program manager shall meet the following
2 qualifications:

3 (1) Be a financial organization as defined under this
4 act.

5 (2) Demonstrate its financial stability and integrity to
6 the satisfaction of the board.

7 (3) Demonstrate the safety of the investment instrument
8 or instruments being offered.

9 (4) Demonstrate the ability to track the growth of
10 higher education costs.

11 (5) Demonstrate the ability to satisfy the recordkeeping
12 and reporting requirements of this article.

13 (6) Demonstrate the ability to market the opportunities
14 program.

15 (7) Accept electronic transfers and payroll deductions.

16 Section 8. Selection of program manager.

17 Through a competitive bidding process the board shall select
18 a single program manager based on the qualifications of each
19 applicant. Potential program managers that are domiciled or have
20 a major presence in Pennsylvania shall receive preferential
21 treatment in the selection process. The program manager may
22 offer more than one investment instrument for account owners to
23 select.

24 Section 9. Powers and duties of program manager.

25 The program manager shall have the following powers and its
26 duty shall be to:

27 (1) Take any action necessary to keep the program in
28 compliance with applicable Federal law, rules and
29 regulations.

30 (2) Maintain adequate records of each account, keep each

1 account segregated and provide the board with such
2 information as may be necessary for the board to produce
3 statements for each account owner.

4 (3) Offer investment instruments to account owners,
5 market and promote such instruments to account owners and
6 potential account owners.

7 (4) Hold all accounts for the benefit of the account
8 owner.

9 (5) Distribute account funds to beneficiaries in
10 accordance with direction provided by the board.

11 (6) Permit the board access to its books and records as
12 they pertain to the program.

13 (7) Provide the board with copies of all regulatory
14 filings and reports, other than those of a confidential or
15 restricted nature.

16 (8) Make a report of the periodic inspection of its
17 records and accounts by any regulatory agency and by the
18 auditors for the program manager.

19 Section 10. Biennial review.

20 The board shall audit and review at least biennially the
21 performance of the program manager, focusing at a minimum on its
22 investment record, its recordkeeping and its customer service
23 record.

24 Section 11. Contract requirements.

25 The board shall set the term for any contract with the
26 program manager, but in no event shall a contact extend for more
27 than seven years. Contracts may be renewed. Contracts may be
28 terminated by the board for cause. If the contract of a program
29 manager is not renewed after the end of its term:

30 (1) No new accounts will be established with that

1 program manager.

2 (2) Previously established accounts may be terminated
3 and the funds in those accounts shall roll over to the new
4 program manager. Accounts that remain with a program manager
5 after its contract has been terminated or not renewed shall
6 remain subject to all oversight and reporting requirements
7 established by the agency.

8 (3) Additional contributions shall be accepted in
9 existing accounts.

10 Section 12. Tuition account applications.

11 (a) Procedure.--A tuition account may be opened with an
12 approved program manager by any person who desires to save for
13 the payment of qualified higher education expenses of a
14 designated beneficiary and who files an application to do so.
15 The person shall be deemed an account owner. An application
16 shall be in the form prescribed by the agency and shall include,
17 at a minimum, the following information:

18 (1) The name, address and Social Security number of the
19 account owner.

20 (2) The name, address and Social Security number of the
21 designated beneficiary.

22 (3) A certification relating to no excess contributions.

23 (b) Fee.--There shall be a nominal fee for each application.

24 Section 13. Withdrawals.

25 (a) General rule.--An account owner may withdraw any part of
26 the balance of an account after giving appropriate notice.

27 (b) Limitation.--Account owners may not withdraw matching
28 funds nor the interest on matching funds for nonqualifying
29 purposes.

30 (c) Procedures.--

1 (1) The board shall adopt a standard to determine
2 whether a withdrawal is qualified or not. For the withdrawal
3 to be considered qualified, the account owner must present
4 certifications of qualified higher education expenses in a
5 manner and form prescribed by the agency. Qualified
6 withdrawals must be made pursuant to methods established by
7 the board and the program manager and consistent with any
8 agreement between those parties and the account owner.

9 (2) The board and the program manager shall adopt
10 standard procedures relative to the distribution of
11 withdrawals. In the case of any nonqualified withdrawal, an
12 amount equal to 5% of the portion of the withdrawal
13 constituting income, as determined in accordance with the
14 principles of section 529 of the Internal Revenue Code, shall
15 be withheld as a penalty and paid into a trust fund which
16 shall be established by the board and administered by the
17 agency. The funds held in trust shall be used to provide
18 scholarships for Pennsylvania residents through the State
19 grant program operated by the agency. The board may increase
20 the penalty so that it is not a de minimis penalty, in order
21 for the program to continue to qualify as a qualified State
22 tuition program under section 529 of the Internal Revenue
23 Code.

24 Section 14. Changes.

25 (a) Beneficiary.--An account owner may change the designated
26 beneficiary of an account to another individual who is a member
27 of the same family as the original designated beneficiary, in
28 accordance with procedures established by the board.

29 (b) Transfer of moneys.--An account owner may transfer all
30 or a portion of an account to another opportunities program

1 tuition account established in the name of another member of the
2 same family as the original designated beneficiary.

3 Section 15. Prohibitions.

4 No account owner or designated beneficiary of any account may
5 use an interest in an account as security for a loan. Any pledge
6 of an interest in an account shall be of no force or effect.

7 Section 16. Limitations on contributions.

8 Contributions on behalf of a designated beneficiary may not
9 total in excess of \$125,000 or amount to more than \$50,000 in
10 any single calendar year. A balance in excess of these limits
11 shall be withdrawn automatically as a nonqualified withdrawal or
12 transferred to another account for another designated
13 beneficiary in accordance with the provisions of this act.

14 Section 17. Distributions.

15 Any distribution from an account to an individual or for the
16 benefit of an individual during a calendar year shall be
17 reported to the Internal Revenue Service to the Department of
18 Revenue and to either the account owner, designated beneficiary
19 or distributee to the extent required by Federal law or
20 regulation. An account shall be open for at least three years
21 before a qualified withdrawal can be made.

22 Section 18. Annual fees.

23 A reasonable annual fee may be imposed on the account owner
24 for the maintenance of the account.

25 Section 19. Disclosure.

26 Tuition savings agreements shall be subject to applicable
27 State laws relating to truth in lending. The board shall
28 disclose the following information in writing to each account
29 owner or prospective owner of a tuition account:

30 (1) The terms and conditions for purchasing a tuition

1 account.

2 (2) Any restrictions on the substitution of
3 beneficiaries.

4 (3) The time period during which and the purposes for
5 which a designated beneficiary may receive benefits under the
6 opportunities program.

7 (4) The terms and conditions under which money may be
8 withdrawn from an account, the reasonable charges that may
9 apply, and the penalty for a nonqualified withdrawal.

10 (5) The probable tax consequences associated with
11 contributions to and withdrawals from a tuition account.

12 (6) All other rights and obligations pertaining to
13 participation in the opportunities program.

14 Section 20. Annual account statements.

15 Upon the conclusion of each calendar year, the program
16 manager shall provide each account owner with an annual
17 statement which reflects the activity of that account, including
18 all contributions, imputed interest, fees and charges and
19 qualified and nonqualified withdrawals.

20 Section 21. Local government school district and charitable
21 organization participation.

22 Local governments, school districts and organizations
23 operating under section 501(c)(3) of the Internal Revenue Code
24 and registered with the Department of State as a charitable
25 organization may open and become the account owner of a tuition
26 account in order to fund scholarships for persons whose identity
27 will be determined at the time of disbursement. In the case of
28 an account established under this section, the identity of the
29 designated beneficiary need not be established at the time the
30 tuition account is opened, and each individual who receives an

1 interest in such an account as a scholarship shall be treated as
2 a designated beneficiary with respect to such interest.

3 Section 22. Safeguards and protections.

4 Nothing in this act can be construed to:

5 (1) Give any designated beneficiary any rights or legal
6 interest in an account unless the designated beneficiary is
7 also the account owner.

8 (2) Guarantee or otherwise assure a designated
9 beneficiary of admission to an institution of higher
10 education.

11 (3) Establish State residency for an individual solely
12 because that individual is a designated beneficiary of an
13 account established under this program.

14 (4) Guarantee that the amounts saved will yield a
15 specific return or will be sufficient to cover the qualified
16 higher education expenses of the designated beneficiary.

17 Section 23. Computation of financial aid.

18 Funds invested in a tuition account shall not be used in
19 calculating a financial aid award under any Pennsylvania
20 financial aid program administered by the agency.

21 Section 24. Protection of account funds.

22 Tuition accounts in the opportunities program are exempt from
23 the satisfaction of any money judgment in any civil proceeding
24 as follows:

25 (1) One hundred percent of the moneys in an account
26 established under section 11.

27 (2) One hundred percent of the moneys in an account
28 where the judgment debtor is the account owner and the
29 designated beneficiary is a minor.

30 (3) An amount not exceeding \$10,000 in the aggregate in

1 an account or accounts where the judgment debtor is the
2 account owner.

3 Section 25. Matching funds.

4 (a) Qualifications.--The board shall match the contributions
5 of account owners who meet the following qualifications:

6 (1) The account owner is the parent or legal guardian of
7 the designated beneficiary.

8 (2) The account owner is a legal resident of this
9 Commonwealth at the time the contributions are made.

10 (3) The designated beneficiary is a legal resident of
11 this Commonwealth at the time the contributions are made.

12 (4) The adjusted gross income of the account owner for
13 the prior tax year is \$75,000 or less, as determined by that
14 individual's State personal income tax return.

15 (b) Amount.--The board shall deposit an amount equal to 5%
16 of the actual contributions made by an account owner who meets
17 the qualifications above, provided, however, that in no event
18 will the board deposit more than \$300 a year or more than \$1,000
19 in the aggregate in any individual account. The board may use
20 direct appropriations or transfer funds from other sources to
21 provide the requisite matching funds.

22 Section 26. State tax consequences.

23 (a) Distribution of interest.--Distributions of interest to
24 an account shall not be subject to State taxation as income in
25 the year the distributions were made, unless such distributions
26 were actually withdrawn from the tuition account. Withdrawals
27 that represent interest on the principal invested by the account
28 owner shall be subject to State tax as interest income to the
29 designated beneficiary. If a withdrawal is for less than the
30 full value of the tuition account, the amount of the withdrawal

1 described as interest shall be proportional to a relative amount
2 of principal and interest in the account at the time of
3 withdrawal.

4 (b) Matching funds.--Matching funds shall not be considered
5 to be income for State tax purposes during the year in which
6 such matching contribution are made. The board shall consider
7 the matching funds and any interest which has accrued as the
8 result of the contribution of such matching funds into an
9 account to be the last moneys to be paid out from that account.
10 In the event that total withdrawals for tuition expenses is for
11 less than the full value of the tuition account, the amount of
12 funds remaining in said account which can be attributed to a
13 matching contribution by the board shall revert to the board and
14 may be used to provide future matching grants or scholarships
15 under the State grant programs operated by the agency.

16 Section 27. Appropriation.

17 The sum of \$250,000 is hereby appropriated to the Board of
18 Managers of the College Opportunity Program to be used
19 exclusively for making matching contributions pursuant to
20 section 25.

21 Section 28. Applicability.

22 This act shall apply to the tax year beginning on January 1,
23 2000, and thereafter.

24 Section 28. Effective date.

25 This act shall take effect immediately.