
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2406 Session of
2008

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DERMODY, FABRIZIO, FLECK, KULA, O'NEILL, PASHINSKI, SHIMKUS,
TANGRETTI, VITALI AND YUDICHAK, APRIL 15, 2008

REFERRED TO COMMITTEE ON FINANCE, APRIL 15, 2008

AN ACT

1 Providing for the establishment of two programs of savings for
2 services for adult children with special needs, a guaranteed
3 savings program and an investment program; establishing the
4 Special Needs Account Program within the Treasury Department;
5 establishing special needs account funds; and providing for
6 Special Needs Account Program contracts.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Special Needs
11 Account Program Act.

12 Section 2. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) Thousands of Pennsylvanians with various special
15 needs require assistance transitioning into employment or
16 higher education.

1 (2) These individuals are eager to begin employment or
2 to continue their education in institutions of higher
3 education, or to enhance their skills through trade schools.

4 (3) Many people with special needs who complete their
5 secondary education and reach the age of 21 still require
6 services and programs to assist them in making this
7 transition.

8 (4) It is in the best interest of all the citizens of
9 this Commonwealth to provide the support necessary for people
10 with special needs to succeed and realize their full
11 potential.

12 (5) With the proper encouragement and support, this
13 transition can be made easier, enabling people with special
14 needs to reach their goals.

15 (6) The purpose of this act is to enable families of
16 children with special needs with a means of saving funds
17 which can be utilized to purchase programs and services that
18 will assist their adult children to transition into
19 employment or educational programs.

20 Section 3. Definitions.

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

24 "Account." The account of an account owner.

25 "Account owner." Any individual, corporation, association,
26 partnership or other legal entity that enters into a program
27 contract.

28 "Beneficiary." A person who meets the eligibility criteria
29 of this chapter and by the Treasury Department and on whose
30 behalf an account owner enters into a program contract.

1 "Board." The Special Needs Tuition Account Programs Advisory
2 Board established in section 5.

3 "Bureau." The Special Needs Account Program Bureau
4 established in section 4.

5 "Department." The Treasury Department of the Commonwealth.

6 "Eligible services." The term includes education expenses,
7 vocational assistance and physical and mental care.

8 "Fund." The guaranteed savings fund or the investment fund.

9 "Guaranteed savings contract." A contract under the
10 guaranteed savings program.

11 "Guaranteed savings fund." The Special Needs Account
12 Guaranteed Savings Program Fund established in section 7(c).

13 "Guaranteed savings program." The program established under
14 section 7(a).

15 "Investment contract." A contract under the investment
16 program.

17 "Investment fund." The Special Needs Account Investment
18 Program Fund established in section 7(d).

19 "Investment program." The program established under section
20 7(b).

21 "Lawful investment." An investment described in either 24
22 Pa.C.S. § 8521 (relating to management of funds and accounts) or
23 71 Pa.C.S. § 5931 (relating to management of funds and
24 accounts).

25 "Net earnings rate of the guaranteed savings fund." The
26 percentage return of the investment of guaranteed savings fund
27 assets after adjusting for any taxes and operating expenses.

28 "Program." The guaranteed savings program or the investment
29 program.

30 "Program contract." A guaranteed savings contract or an

1 investment contract.

2 "Special needs." Diagnoses including medical, behavioral,
3 developmental, mental health and learning issues.

4 "Value of the account." As follows:

5 (1) For a guaranteed savings contract, an amount
6 calculated by compounding annually each separate contribution
7 to the date of the calculation at the actual annual net
8 earnings rate of the guaranteed savings fund.

9 (2) For an investment contract, an amount determined by:

10 (i) subtracting expenses, fees and taxes, if any,
11 from the value of the investment fund; and

12 (ii) prorating the remaining net value by shares.

13 Section 4. Bureau.

14 (a) Establishment.--There is established within the
15 department the Special Needs Account Program Bureau.

16 (b) Purpose.--The purpose of the bureau is to administer the
17 guaranteed savings program and the investment program.

18 Section 5. Board.

19 (a) Establishment.--The Special Needs Account Programs
20 Advisory Board is established as follows:

21 (1) The following are executive members:

22 (i) The Secretary of Education.

23 (ii) The Secretary of Health.

24 (iii) The Secretary of Labor and Industry.

25 (iv) The Secretary of Public Welfare.

26 (v) The State Treasurer.

27 (2) The following are legislative members:

28 (i) Two members appointed by the Majority Leader of
29 the Senate and two members appointed by the Minority
30 Leader of the Senate.

(ii) Two members appointed by the Majority Leader of the House of Representatives and two members appointed by the Minority Leader of the House of Representatives.

(3) The Governor shall appoint six public members.

(4) Members under paragraphs (2) and (3) must have:

(i) knowledge, skill and expertise in financial affairs; or

(ii) experience in working with people with special needs.

(b) Terms.--

(1) A member under subsection (a)(1) shall serve ex officio.

(2) A member under subsection (a)(2):

(i) shall serve a term of two years;

(ii) may be removed only for cause; and

(iii) may not serve more than two terms.

(3) A member under subsection (a)(3):

(i) shall serve a term of four years;

(ii) may be removed only for cause; and

(iii) may not serve more than two terms.

(4) Vacancies under subsection (a)(2) and (3) shall be filled for the unexpired terms of appointed members of the board in the same manner as original appointments.

(c) Meetings and chair.--

(1) The Secretary of Public Welfare shall call the organizational meeting of the board.

(2) At the organizational meeting, a chairperson shall be selected from among the members. If a vacancy in the office of chairperson occurs, the vacancy shall be filled by a selection from among the members.

1 (3) Meetings of the board shall be held at least
2 quarterly or at the call of the chairperson.

3 (d) Functions.--

4 (1) The board has the following duties:

5 (i) Consider, study and review the work of the
6 bureau.

7 (ii) Advise the department on requests.

8 (iii) Report annually to the Governor, the Secretary
9 of the Senate and the Chief Clerk of the House of
10 Representatives on its work.

11 (2) The board has the following powers:

12 (i) Make recommendations on its own initiative for
13 the improvement of the special needs account programs.

14 (ii) Make interim reports to the Governor, the
15 Secretary of the Senate and the Chief Clerk of the House
16 of Representatives on its work.

17 (iii) Enlist voluntary assistance as available from
18 citizens, research organizations and other agencies.

19 (e) Staff.--The department shall provide the board with
20 experts, stenographers and assistants as necessary to carry out
21 the work of the board.

22 Section 6. Department.

23 The department has the following powers and duties:

24 (1) Implement this act.

25 (2) Administer the guaranteed savings program and the
26 investment program.

27 (3) Enter into program contracts.

28 (4) Pay directly to an account owner, a beneficiary or a
29 third party authorized by the account owner, upon the receipt
30 of appropriate documentation, money due under a program

1 contract.

2 (5) Contract for goods and services and engage and
3 employ personnel. This paragraph includes services of private
4 consultants, actuaries, managers, legal counsel and auditors
5 for rendering professional, managerial and technical
6 assistance and advice.

7 (6) Solicit and accept gifts, grants, loans and other
8 aid from a person or from Federal, State or local government.

9 (7) Participate in a Federal, State or local government
10 program for prudent management or the establishment and
11 administration of a program.

12 (8) Charge and collect administrative fees and charges
13 in connection with a transaction, including continued
14 participation in a program.

15 (9) As to a program contract:

16 (i) to adjust the term;

17 (ii) to limit the time period; and

18 (iii) to terminate it and make a refund.

19 (10) Contract for insurance, letters of credit and
20 collateral agreements.

21 (11) Restrict the number of participants in the
22 programs.

23 (12) Solicit answers from the appropriate Federal
24 agencies regarding the application of security or other
25 Federal laws to a program.

26 (13) Arrange for an account owner to have contributions
27 deducted from salary.

28 (14) Promulgate regulations.

29 Section 7. Programs and funds.

30 (a) Guaranteed savings program.--

1 (1) All contributions to the guaranteed savings program
2 shall be held in a beneficiary's account. At the time of
3 redemption, documentation outlining the services and the
4 costs of those services to be purchased shall be provided.

5 (2) The guaranteed savings program shall provide that
6 money may be contributed pursuant to a guaranteed savings
7 contract for the future payment of eligible services.

8 (b) Investment program.--

9 (1) The department shall do all of the following:

10 (i) Establish an investment plan that defines the
11 investment program structure and sets forth investment
12 policies and guidelines to be utilized in administering
13 the investment program.

14 (ii) Pursuant to an investment contract, specify all
15 of the following:

16 (A) The minimum and maximum amounts of
17 contributions.

18 (B) The terms and condition for transferring the
19 investment contract to another account owner or
20 substituting a beneficiary for the originally named
21 beneficiary.

22 (C) The terms and conditions for withdrawing
23 contributions or terminating the investment contract.

24 (D) The methods and procedures for:

25 (I) making payments pursuant to the
26 investment contract;

27 (II) making payments of beneficiaries'
28 qualified service expenses; and

29 (III) all other rights and obligations of
30 the account owner and the department.

1 (2) The department may obtain the services of investment
2 managers, program managers and trustees as described in
3 section 8(b) to assist in establishing and administering the
4 plan.

5 (3) The investment program shall provide that money may
6 be contributed pursuant to an investment contract for future
7 payments for eligible services.

8 (4) The investment program shall have no guarantee.

9 (c) Guaranteed savings fund.--

10 (1) There is established in the State Treasury the
11 Special Needs Account Guaranteed Savings Program Fund.

12 (2) The following are the sources of the fund:

13 (i) Appropriations.

14 (ii) Income under section 6(6) and (8).

15 (iii) Contributions by account owners under
16 guaranteed savings program contracts.

17 (iv) Return on money in the guaranteed savings fund.

18 (3) The money in the guaranteed savings fund is
19 continuously appropriated into the guaranteed savings fund.
20 This appropriation shall not lapse at the end of any fiscal
21 year.

22 (4) The department shall repay from the fees, charges
23 and investment earnings of the guaranteed savings fund to the
24 General Fund any money appropriated for the initial planning,
25 organization and administration of the guaranteed savings
26 program. The repayment shall take place within a ten-year
27 period commencing July 1, 2010.

28 (5) The assets of the guaranteed savings fund shall be
29 preserved, invested and expended by the department solely for
30 the purposes set forth in this paragraph. Costs of

1 administering the investment program must be approved by
2 annual appropriation. The following apply:

3 (i) The department shall obtain appropriate
4 actuarial assistance to establish, maintain and certify
5 that the guaranteed savings fund is sufficient to defray
6 its obligations and shall annually evaluate, or cause to
7 be evaluated, its actuarial soundness.

8 (ii) Annually, after the fiscal year has ended, the
9 department shall determine whether the guaranteed savings
10 fund has been actuarially certified as being sufficient
11 to defray its obligations and whether the actuarial
12 soundness of the guaranteed savings fund, as actuarially
13 evaluated, can be maintained with fewer assets and, if
14 so, the dollar value of any excess surplus assets. In
15 making the determination, the department shall consider
16 the projected costs and expenses of the guaranteed
17 savings program and material subsequent events occurring
18 between the end of the fiscal year and the date on which
19 the determination is made.

20 (iii) If the department determines that there are
21 assets in excess of those needed to maintain the
22 actuarial soundness of guaranteed savings fund and the
23 assets actuarially certified as sufficient to defray the
24 costs of the guaranteed savings program, the department
25 may distribute the dollar value of any excess surplus
26 assets by making additional contributions into accounts
27 established pursuant to guaranteed savings contracts that
28 have not been terminated as of the date of determination.

29 (iv) Any distribution of any excess surplus assets
30 of the guaranteed savings fund shall be made on an

equitable basis as determined by the department.

(d) Investment fund.--

(1) There is established in the State Treasury the Special Needs Account Investment Program Fund.

(2) The following are the sources of the fund:

(i) Appropriations.

(ii) Income under section 6(6) and (8).

(iii) Contributions by account owners under investment program contracts.

(iv) Return on money in the investment fund.

(3) The money in the investment fund is continuously appropriated into the investment fund. This appropriation shall not lapse at the end of any fiscal year.

(4) The assets of the investment fund shall be preserved, invested and expended by the department solely for the purposes set forth in this paragraph. Costs of administering the investment program must be approved by annual appropriation. The following apply:

(i) The department shall obtain appropriate actuarial assistance to establish, maintain and certify that the investment fund is sufficient to defray its obligations and shall annually evaluate, or cause to be evaluated, its actuarial soundness.

(ii) Annually, after the fiscal year has ended, the department shall determine whether the investment fund has been actuarially certified as being sufficient to defray its obligations and whether the actuarial soundness of the investment fund, as actuarially evaluated, can be maintained with fewer assets and, if so, the dollar value of any excess surplus assets. In

1 making the determination, the department shall consider
2 the projected costs and expenses of the investment
3 program and material subsequent events occurring between
4 the end of the fiscal year and the date on which the
5 determination is made.

6 (iii) If the department determines that there are
7 assets in excess of those needed to maintain the
8 actuarial soundness of investment fund and the assets
9 actuarially certified as sufficient to defray the costs
10 of the investment program, the department may distribute
11 the dollar value of any excess surplus assets by making
12 additional contributions into accounts established
13 pursuant to investment contracts that have not been
14 terminated as of the date of determination.

15 (iv) Any distribution of any excess surplus assets
16 of the investment fund shall be made on an equitable
17 basis as determined by the department.

18 (e) Administration.--

19 (1) The department, in conjunction with the board, shall
20 make an annual report to the Governor and the Secretary of
21 the Senate and the Chief Clerk of the House of
22 Representatives as follows:

23 (i) The report shall show the condition of the each
24 fund.

25 (ii) The report shall contain the findings and
26 recommendations of the department and the board and the
27 recommendations of any private consultant providing, with
28 or without compensation, services to the department or
29 board.

30 (iii) Consistent with the goal of providing for the

1 maintenance of the fiscal sufficiency of the each fund,
2 the report shall detail actions taken or needed to modify
3 each program so that the each fund, account owners and
4 beneficiaries will receive favorable treatment for
5 purposes of Federal taxation.

6 (iv) The report shall detail actions taken or needed
7 to modify the guaranteed savings program to insure the
8 fiscal sufficiency of the guaranteed savings fund to meet
9 its obligations under this act. The report shall address
10 all of the following:

11 (A) The relationship between:

12 (I) existing and projected net investment
13 returns; and

14 (II) existing and projected special needs
15 service costs.

16 (B) The advisability or necessity of modifying:

17 (I) the price of a guaranteed savings
18 contract;

19 (II) the amount of administrative fee for a
20 guaranteed savings contract; and

21 (III) the amount of refund offered upon
22 termination of a guaranteed savings contract.

23 (f) Limitation.--Any obligation or debt under this act shall
24 not be deemed an obligation or debt of the Commonwealth, nor
25 shall the Commonwealth be liable to pay principal and interest
26 on obligations or to offset any loss of principal and interest
27 earnings on investments made by the Treasury Department or
28 recommended by the board pursuant to this act. Program contracts
29 must contain a plain language statement explaining the
30 limitation contained in this section.

1 Section 8. Investment policies and guidelines.

2 (a) General rule.--

3 (1) The policies governing the investment of the
4 guaranteed savings fund shall be directed to obtaining
5 sufficient income to:

6 (i) meet the obligations of the guaranteed savings
7 fund;

8 (ii) maintain necessary reserves; and

9 (iii) cover operating expense.

10 (2) The policies governing the investment of the
11 investment fund shall be directed to providing for an
12 appropriate balance of risk, liquidity and return
13 commensurate with the management of a prudent investor.

14 (3) With regard to each fund, the department, its
15 investment managers, program managers and trustees shall have
16 the authority to invest and reinvest the funds in all lawful
17 investments.

18 (b) Managers and trustees.--

19 (1) On behalf of each program, the department may
20 contract for investment managers, program managers and
21 trustees to establish and develop each program and fulfill
22 the objectives of each program.

23 (2) As a condition of a contract under paragraph (1) for
24 the guaranteed savings program, the department shall require
25 all of the following:

26 (i) The investment manager, program manager or
27 trustee must act on the basis of program costs and
28 expenses supplied by the department.

29 (ii) The investment manager, program manager or
30 trustee must meet the obligation of the guaranteed

1 savings fund if, as a result of the imprudent selection
2 or supervision of investments or the program by the
3 investment manager, program manager or trustee, the
4 guaranteed savings fund is not fiscally sufficient to
5 meet its obligations.

6 (3) For a contract under paragraph (1) The department
7 may impose liability on any investment manager, program
8 manager or trustee for losses incurred by the fund or an
9 account owner as a result of negligent, fraudulent or
10 imprudent selection or supervision of investments.

11 Section 9. General provisions governing both programs.

12 (a) Levy, execution and security for loans.--An account or a
13 legal interest in an account shall not be subject to attachment,
14 levy or execution by a creditor of an account owner or of a
15 beneficiary and shall not be used as security for a loan.

16 (b) Period of participation.--

17 (1) Except as provided in paragraph (2), a minimum
18 period of one year must elapse between:

19 (i) the time a contribution is made pursuant to a
20 program contract; and

21 (ii) the time that the contribution and an increase
22 in its value may be used for payment of qualified service
23 expenses.

24 (2) The board may prescribe an alternative minimum
25 period of time which must elapse between a contribution and
26 its use for payment of qualified service expenses.

27 (c) Student aid.--

28 (1) Subject to paragraph (2), amounts contributed
29 pursuant to a program contract and an increase in the value
30 of a program contract shall not be used in calculating

1 personal asset contributions for determining eligibility and
2 need for student loan programs, student grant programs or
3 other student aid programs administered by any agency of the
4 Commonwealth.

5 (2) Paragraph (1) may be overridden by Federal law.

6 (d) Cash contributions.--A contribution made pursuant to a
7 program contract may only be made by cash, checks, money order,
8 credit card or other similar method, as determined by the
9 department.

10 (e) Transfers between programs.--The department, pursuant to
11 a program contract, may specify the terms and conditions under
12 which a transfer of contributions and an increased value of
13 contributions may be made from one account to another by an
14 account owner. Nothing in this subsection shall be construed to
15 require the department to allow such a transfer.

16 Section 10. Program contracts.

17 Account owners making contributions for the use of
18 beneficiaries must enter into a program contract with the
19 department.

20 Section 11. Eligible beneficiaries.

21 (a) Residents.--An individual who is a resident of this
22 Commonwealth, diagnosed as having special needs, at the time
23 when the program contract is entered into on the individual's
24 behalf is eligible to be a beneficiary.

25 (b) Nonresidents.--

26 (1) An individual who is not a resident of this
27 Commonwealth, diagnosed as having special needs, is eligible
28 to be a beneficiary for a guaranteed savings contract if
29 entered into on the individual's behalf by a resident of this
30 Commonwealth, including a legal entity with its principal

1 place of business located within this Commonwealth.

2 (2) A nonresident, diagnosed as having special needs, is
3 eligible to be a beneficiary of an investment contract.

4 (c) Designation.--

5 (1) The account owner must designate a beneficiary at
6 the time the account owner enters into a program contract.

7 (2) The account owner may substitute for the current
8 beneficiary only a member of the family of that beneficiary
9 upon approval by the department.

10 Section 12. Termination and refund.

11 (a) Death.--If all beneficiaries die, the account owner or
12 the account owner's designee shall receive the value of the
13 account upon termination of a program contract.

14 (b) Refunds for other reasons.--A refund for a program
15 contract under this subsection for reasons other than as set
16 forth in subsection (a) shall be as follows:

17 (1) If the value of the account is less than or equal to
18 the sum of the contributions made pursuant to the program
19 contract, the value of the account.

20 (2) If the value of the account is more than the sum of
21 the contributions made pursuant to the special needs account
22 investment program contract, the sum of the contributions
23 plus any accrued interest.

24 (c) Fees.--The department may impose a fee upon termination
25 of the account for administrative costs and deduct the fee from
26 the amount otherwise payable.

27 (d) Taxation of refunds.--A refund under this section shall
28 be subject to taxation as income under the laws of this
29 Commonwealth.

30 Section 13. Safeguards and protections.

(a) Disclosure.--For a program contract, the department shall disclose the following information in writing to the account owner:

(1) The terms and conditions for purchasing an account.

(2) Restrictions on the substitution of beneficiaries.

(3) The time period during which and the purposes for which a designated beneficiary may receive benefits from eligible services.

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

(5) The probable tax consequences associated with contributions to and withdrawals from a special needs account.

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

(b) Construction.--Nothing in this act shall be construed to do any of the following:

(1) Give a beneficiary a right or legal interest in an account unless the beneficiary is also the account owner.

(2) Establish residence in this Commonwealth for an individual solely because that individual is a designated beneficiary of an account established under this act.

Section 14. Exemption from security laws.

A program contract is exempt from the act of December 5, 1972, known as the Pennsylvania Securities Act of 1972.

Section 15. State tax exemption.

The following shall be exempt from taxation by the Commonwealth or a political subdivision:

(1) Property of a fund. This paragraph includes income.

1 (2) A contribution made pursuant to a program contract.

2 (3) An increase in the value of a contribution under
3 paragraph (2).

4 (4) Retention, or transfer during life or as a result of
5 death of a legal interest in a program contract.

6 (5) Payment of qualified service provider expenses of
7 beneficiaries made pursuant to a program contract.

8 Section 16. Federal taxation.

9 The department may take appropriate action in order to obtain
10 a determination from the Internal Revenue Service or a Federal
11 Court as to whether an item listed in section 15 is a
12 transaction which will subject an account owner or a fund to
13 Federal taxation.

14 Section 40. Effective date.

15 This act shall take effect in 60 days.