

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 2**Session of
1991

INTRODUCED BY JUBELIRER, HOPPER, FISHER, PETERSON, CORMAN,
SHUMAKER, GREENWOOD, MADIGAN, SALVATORE, SHAFFER, HELFRICK,
LOEPER, HOLL, WENGER, GREENLEAF, ANDREZESKI, PUNT, HART,
BRIGHTBILL, BAKER, LEMMOND, RHOADES, BORTNER AND REIBMAN,
JANUARY 15, 1991

SENATOR RHOADES, EDUCATION, AS AMENDED, JUNE 18, 1991

AN ACT

1 Providing for the advance purchase of tuition at certain
2 institutions of higher education; establishing the Tuition
3 Account Program Bureau within the Treasury Department and
4 providing duties for the Treasury Department; establishing
5 the Tuition Payment Fund; and providing for tuition account
6 payment contracts.

7 The General Assembly hereby finds and declares as follows:

8 (1) Tuition at institutions of higher education is
9 difficult for many to afford and difficult to predict. As a
10 result, the ability of individuals and families to plan for
11 future educational expenses has been adversely affected.

12 (2) It is in the best interest of the people of
13 Pennsylvania to foster higher education in order to provide
14 well-educated citizens.

15 (3) It is in the best interest of the people of
16 Pennsylvania to encourage State residents to enroll in
17 institutions of higher education.

18 (4) Providing a mechanism to help assure the higher

education of the citizens of this Commonwealth is necessary and desirable for the public health, safety and welfare.

(5) The purposes of this act are to:

(i) Provide wide and affordable access to institutions of higher education for the residents of this Commonwealth.

(ii) Encourage attendance at institutions of higher education and help individuals plan for educational expenses.

(iii) Provide a program for the advance purchase of tuition as both a means and an incentive for the citizens of this Commonwealth to provide for future higher education expenses.

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4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Tuition
8 Account Program Act.

9 Section 2. Definitions.

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

13 "Beneficiary." A person who meets the eligibility criteria
14 established by this act and by the department and on whose
15 behalf a purchaser enters into a tuition account payment
16 contract.

17 "Board." The Tuition Account Program Advisory Board.

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

19 "Fund." The Tuition Payment Fund.

20 "Lawful investment." Any of those investments described in
21 either 24 Pa.C.S. § 8521 (relating to management of fund and
22 accounts) or 71 Pa.C.S. § 5931 (relating to management of fund
23 and accounts).

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

27 "Participating institution." Any accredited, degree-granting
28 college or university which is required ~~by this act to~~ <—
29 participate in the tuition account program ~~pursuant to~~ UNDER <—
30 section 8.

1 "Purchaser." A person, including a natural person,
2 corporation, association, partnership or other legal entity, who
3 enters into a tuition account payment contract.

4 "Tuition." The total of all fees and charges required for
5 attendance at an institution of higher education for a full-
6 time, undergraduate, academic year, excluding charges for room
7 and board.

8 "Tuition account payment contract." A contract entered into
9 by a purchaser and the department on behalf of the Commonwealth
10 to provide for the advance purchase of tuition credits for a
11 beneficiary attending a participating institution.

12 "Tuition credits." Credits as determined in section 9(c).

13 "Tuition shortfall." The positive difference between the
14 tuition for the number of tuition credits used at a
15 participating institution accepting a beneficiary for enrollment
16 and the tuition payment as determined in section 9(g).

17 Section 3. Tuition Account Program Bureau.

18 The State Treasurer is directed to establish a bureau within
19 the Treasury Department, which shall be known as the Tuition
20 Account Program Bureau, for the purpose of establishing and
21 administering the tuition account program. The program shall
22 provide for the advance purchase of tuition credits for a
23 beneficiary attending a participating institution.

24 Section 4. Tuition Account Program Advisory Board.

25 (a) Creation.--There is created a Tuition Account Program
26 Advisory Board. The board shall be composed of the State
27 Treasurer, the Chairman of the Board of Directors of the
28 Pennsylvania Higher Education Assistance Agency, the
29 Commissioner of Higher Education within the Department of
30 Education, the Chairman of the Council of Higher Education and

1 the Chancellor of the State System of Higher Education, all of
2 whom shall be ex officio members. There also shall be 12 other
3 members of the board. Of these 12 other members, three shall be
4 appointed by the President pro tempore of the Senate, three
5 shall be appointed by the Speaker of the House of
6 Representatives and six shall be appointed by the Governor. Of
7 the three members appointed by the President pro tempore of the
8 Senate, one must be a member of the Senate and one must be
9 recommended by the Minority Leader of the Senate. Of the three
10 members appointed by the Speaker of the House of
11 Representatives, one must be a member of the House of
12 Representatives and one must be recommended by the Minority
13 Leader of the House of Representatives. The remaining members of
14 the board appointed by the President pro tempore of the Senate
15 and the Speaker of the House of Representatives must have
16 knowledge, skill and expertise in financial affairs. Of the six
17 members appointed by the Governor, one must be the president of
18 a State-related institution, one must be the president of one of
19 the institutions operating under Article XIX-A of the act of
20 March 10, 1949 (P.L.30, No.14), known as the Public School Code
21 of 1949, and two must be presidents of private or independent
22 four-year, degree-granting colleges or universities located
23 within this Commonwealth.

24 (b) Terms.--Board members appointed by the President pro
25 tempore of the Senate, the Speaker of the House of
26 Representatives and the Governor shall be appointed for terms of
27 four years each. Vacancies shall be filled for the unexpired
28 terms of appointed members of the board in the same manner as
29 original appointments.

30 (c) Organizational meeting.--The Commissioner of Higher

1 Education shall call the organizational meeting of the board, at
2 which time a chairman shall be selected from among the members.
3 Meetings of the board shall be held at least quarterly or at the
4 call of the chairman.

5 (d) Duties.--The board shall consider, study and review the
6 work of the Tuition Account Program Bureau, shall advise the
7 department on request and shall make recommendations on its own
8 initiative for the improvement of the tuition account program.
9 The board shall report annually to the Governor and to the
10 General Assembly, and may make such interim reports as are
11 deemed advisable.

12 (e) Employees.--The department shall have the power and its
13 duty shall be to provide the board with experts, stenographers
14 and assistants as necessary to carry out the work of the board.
15 In addition, the board may enlist voluntary assistance as
16 available from citizens, research organizations and other
17 agencies.

18 Section 5. Powers of department.

19 In addition to the powers granted by other provisions of this
20 act, the department shall have the powers necessary or
21 convenient to carry out this act, including, but not limited to,
22 the power to:

23 (1) Administer the tuition account program and the fund.

24 (2) Enter into tuition account payment contracts with
25 purchasers.

26 (3) Contract and make any arrangements necessary with
27 institutions of higher education.

28 (4) Pay directly to an institution, upon the receipt of
29 appropriate documentation, the funds which the department is
30 obligated to transfer to the institution upon a beneficiary's

1 use of tuition credits.

2 (5) Contract for goods and services, and engage and
3 employ personnel. ~~This paragraph includes, but is~~, INCLUDING, <—
4 BUT not limited to, the services of private consultants,
5 actuaries, managers, legal counsel and auditors for rendering
6 professional, managerial and technical assistance and advice.

7 (6) Solicit and accept gifts, grants, loans and other
8 aid from any person, corporation or other entity or from
9 Federal, State or local government and participate in any
10 Federal, State or local government program, if necessary for
11 prudent management.

12 (7) Charge and collect administrative fees and charges
13 in connection with any transaction, including continued
14 participation in the tuition account program.

15 (8) Terminate tuition accounts and make refunds.

16 (9) Borrow money, with the approval of the Governor, to
17 the extent permitted by Federal law, by making and issuing
18 notes, bonds and other evidences of indebtedness, as
19 necessary to fulfill the department's obligations.

20 (10) Restrict the number of participants in the program.

21 (11) Adjust the terms of subsequent tuition account
22 payment contracts.

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

26 (13) Limit the times and dates during which tuition
27 account payment contracts may be sold.

28 (14) Consider means whereby a purchaser may have
29 installment payments deducted from salary.

30 (15) Promulgate regulations.

1 Section 6. Tuition Payment Fund.

2 (a) Establishment.--There is established in the State
3 Treasury a special fund to be known as the Tuition Payment Fund.
4 This fund shall be invested in accordance with this act. All
5 money in the fund is hereby appropriated to the department on a
6 continuing basis to carry out the provisions of this act.

7 (b) Administration.--

8 (1) The assets of the fund shall be preserved, invested
9 and expended solely pursuant to, and for the purposes set
10 forth in, this act.

11 (2) The department shall obtain appropriate actuarial
12 assistance to establish, maintain and certify that the fund
13 is sufficient to defray the tuition account program's
14 obligations and shall annually evaluate, or cause to be
15 evaluated, the actuarial soundness of the fund. If the
16 department finds a need for additional assets in order to
17 preserve actuarial soundness or if the department finds that
18 actuarial soundness can be maintained with fewer assets, it
19 may adjust the ~~terms of subsequent tuition account payment~~ <—
20 ~~contracts~~ PURCHASE PRICES OF THE TUITION CREDITS CALCULATED <—
21 UNDER SECTION 9(C)(3) to ensure such soundness.

22 (3) The department, in conjunction with the board, shall
23 make an annual report to the Governor and the General
24 Assembly showing the fund's condition. This report shall
25 contain the findings and recommendations of the department
26 and the board and the recommendations of any private
27 consultant under contract or volunteering services to the
28 department or board. The report shall detail actions taken or
29 needed to modify the tuition account program to insure the
30 fiscal sufficiency of the fund to meet its obligations under

1 this act. The report shall address the relationship between
2 existing and projected net investment returns and existing
3 and projected tuition levels and address the advisability or
4 necessity of modifying the authorized investment of fund
5 assets, the purchase price of tuition credits, the amount of
6 administrative fee or charges or the amount of refunds
7 offered upon termination of a tuition account. Further,
8 consistent with the goal of providing for the maintenance of
9 the fiscal sufficiency of the fund, this report shall detail
10 those actions taken or needed to modify the tuition account
11 program so that the fund, purchasers and beneficiaries will
12 receive favorable treatment for purposes of Federal taxation.

13 (c) Composition.--The fund shall consist of:

14 (1) All payments made by purchasers pursuant to tuition
15 account payment contracts and all interest, earnings and
16 additions thereto.

17 (2) Any other money, public or private, appropriated or
18 made available to the department for the fund from any source
19 and all interest, earnings and additions thereto.

20 (d) Operating and administrative costs.--The department
21 shall, through the Governor, annually submit to the General
22 Assembly a budget covering the operating expenses of the Tuition
23 Account Program Bureau and the board. Upon approval by the
24 General Assembly in an appropriation bill, expenses as incurred
25 by the Tuition Account Program Bureau and the board, commencing
26 one year after tuition credits have been offered for sale to the
27 public, shall be paid from the investment earnings of the fund.

28 (E) REPAYMENT OF INITIAL APPROPRIATION.--THE DEPARTMENT
29 SHALL REPAY FROM THE INVESTMENT EARNINGS OF THE FUND TO THE
30 GENERAL FUND THE SUM OF \$200,000 APPROPRIATED FOR THE INITIAL

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1 PLANNING, ORGANIZATION AND ADMINISTRATION OF THE TUITION ACCOUNT
2 PROGRAM AS SET FORTH IN SECTION 18. THE REPAYMENT SHALL TAKE
3 PLACE WITHIN A TEN-YEAR PERIOD, WHICH PERIOD COMMENCES ONE YEAR
4 AFTER TUITION CREDITS HAVE BEEN OFFERED FOR SALE TO THE PUBLIC.

5 Section 7. Investment policies and guidelines.

6 (a) General rule.--The policies governing the investment of
7 the fund shall be directed to obtaining sufficient income to
8 meet the Commonwealth's obligations under this act, maintaining
9 necessary reserves and covering operating expenses. The
10 department, its investment manager and trustee shall not engage
11 in any investment practice or activity which entails greater
12 risk than necessary to meet these objectives but shall have the
13 authority to invest and reinvest the fund in all lawful
14 investments.

15 (b) Investment manager and trustee.--The department ~~shall~~ <—
16 MAY contract with ~~persons, corporations, associations,~~ <—
17 ~~partnerships~~ ONE OR MORE PERSONS or other legal entities to <—
18 serve as investment managers and trustees to the department on
19 behalf of the tuition account program. In order to fulfill the
20 objectives of the tuition account program, the investment
21 managers and trustees shall work with the department to create
22 an investment program, to develop investment portfolios and to
23 supervise investments and the investment program selected. The
24 DEPARTMENT MAY REQUIRE THAT THE investment managers and trustees <—
25 ~~shall~~ agree, based on actuarial projections of program costs and <—
26 expenses supplied by the department, to meet any obligations of
27 the department if, as a result of the imprudent selection or
28 supervision of investments or the investment program by the
29 investment managers or trustees, the tuition payment fund is not
30 fiscally sufficient to enable the department to fulfill its

1 obligations under this act.

2 Section 8. Participating institutions.

3 The following institutions of higher education shall
4 participate in the tuition account program:

5 (1) Community colleges operating under Article XIX-A of
6 the act of March 10, 1949 (P.L.30, No.14), known as the
7 Public School Code of 1949.

8 (2) Universities comprising the State System of Higher
9 Education.

10 (3) The following State-related institutions:

11 (i) The Pennsylvania State University.

12 (ii) The University of Pittsburgh.

13 (iii) Temple University.

14 (iv) Lincoln University.

15 (4) Any institution which is hereafter designated as
16 "State-related" by the Commonwealth.

17 Section 9. Tuition account program.

18 (a) General description.--Each payment made pursuant to a
19 tuition account payment contract will purchase tuition credits
20 at one of three standard tuition levels or, at the purchaser's
21 designation, at a specific participating institution. All
22 tuition credits purchased will be held in a beneficiary's
23 account and will be converted to the tuition level of the
24 institution to be attended by the beneficiary. A participating
25 institution attended by a beneficiary shall accept that
26 beneficiary's tuition credits when presented. The department
27 shall pay from the fund to the participating institution the
28 lesser of the actual tuition for the number of tuition credits
29 used or the tuition payment as specified in subsection (g).

30 Payments on account of tuition shortfalls shall be made to

1 participating institutions as provided for in section 10.

2 (b) Standard tuition levels.--The department shall annually
3 establish three standard tuition levels corresponding
4 approximately to the average tuition charges for that year at
5 the Commonwealth's community colleges, at universities in the
6 State System of Higher Education and at State-related
7 universities. Any purchaser may buy tuition credits at any
8 designated standard tuition level or at the tuition rate of a
9 specific participating institution.

10 (c) Tuition credits.--Tuition credits are whole or partial
11 units related to an academic year and are obtained as follows:

12 (1) The payment for each tuition purchase shall be
13 divided by either the tuition at a standard tuition level or
14 the tuition at a specific participating institution, as
15 designated by the purchaser.

16 (2) For tuition purchases during the period from August
17 1 to July 31, tuition rates for the corresponding academic
18 year shall be used.

19 (3) If the department, in its discretion, determines
20 that the purchase payment for tuition credits representing a
21 unit of tuition for one academic year at a standard tuition
22 level or at a specific participating institution is to be
23 greater or less than actual tuition for the corresponding
24 year at a standard tuition level or at a specific
25 participating institution, the method of calculating tuition
26 credits in accordance with paragraphs (1) and (2) shall be
27 adjusted accordingly.

28 (4) The number of tuition credits calculated in
29 accordance with paragraphs (1), (2) and (3) shall be reduced
30 in a manner determined by the department reasonably to

reflect potential investment loss resulting from the time of year when the purchase is made.

(d) Certifying tuition.--On or before July 31, a participating institution shall certify to the department the tuition to be charged by that institution for the academic year beginning on or after August 1 of that year and ending on or before July 31 of the following year; and, at such times as the department shall determine, each participating institution shall certify to the department the tuition charged by that institution for the current or any previous academic year.

(e) Conversion of tuition credits.--Upon request of any purchaser or beneficiary, the department shall convert tuition credits purchased at standard tuition levels to actual tuition at a specific participating institution by multiplying the number of tuition credits purchased each year by the ratio of that academic year's standard tuition level divided by the tuition for the same academic year at the designated participating institution. Upon request of the purchaser or beneficiary, the department, following the same procedure, shall convert tuition credits purchased at the tuition rate of a participating institution to the tuition at another participating institution designated in the request. The sum of such conversions shall be the total tuition credits applicable to a specific participating institution.

(f) Issuance and redemption of certified tuition credits.-- Upon application, the department shall issue to a purchaser or beneficiary a certified statement of accumulated tuition credits for the payment of all or a portion of a student's tuition for a specific academic year at a designated participating institution. Any participating institution which presents to the

1 department a certified statement of tuition credits for a
2 student accepted for enrollment for a specific academic year
3 shall be paid by the department the lesser of actual tuition for
4 the number of tuition credits used as established by the
5 institution for that academic year or the tuition payment for
6 the academic year calculated as specified in subsection (g).

7 (g) Tuition payment.--Upon presentation of a certified
8 statement of tuition credits by a participating institution or
9 in anticipation thereof, the department shall calculate the
10 tuition payment for the academic year specified. The tuition
11 payment under this section shall consist of the purchase price
12 of each total annual purchase of tuition credits compounded each
13 year from the year of purchase to the year during which such
14 credits are to be utilized, by the average annual net earnings
15 rate of the fund. The compounded values of annual purchases of
16 tuition credits shall be summed in order of date of purchase
17 until sufficient credits for one academic year are obtained.

18 (h) Other uses of tuition credits.--The department shall
19 permit the use of tuition credits for master's degree and other
20 postbaccalaureate programs at participating institutions, after
21 an appropriate conversion. The department and participating
22 institutions also may agree that tuition credits remaining in a
23 tuition account after tuition is paid may be converted into
24 other educational expense credits to be applied against room,
25 board and other educational expenses. Other educational expense
26 credits shall be determined by an appropriate conversion.

27 (i) Course load or credit hours.--A beneficiary attending a
28 participating institution may apply tuition credits to a
29 specific academic year at the maximum course load or maximum
30 number of credit hours generally permitted to full-time

1 undergraduates at that institution.

2 (j) Levy and execution.--A tuition account shall not be
3 subject to attachment, levy or execution by any creditor of a
4 purchaser or beneficiary.

5 (k) Period of participation.--Notwithstanding any of the
6 provisions of this act, a minimum period of four years must
7 elapse between the time the first tuition account contract is
8 entered into on behalf of the beneficiary and the time that
9 tuition credits may be issued and redeemed pursuant to
10 subsection (f).

11 (l) Student aid.--The value of tuition credits shall not be
12 used in calculating personal asset contribution for determining
13 eligibility and need for student loan programs, student grant
14 programs or other student aid programs administered by any
15 agency of the Commonwealth, except as otherwise may be provided
16 by Federal law.

17 (m) Residency.--The purchase payment for tuition credits
18 shall be determined with reference to the residency of the
19 beneficiary at the time of purchase. If the residency of the
20 beneficiary changes, there shall be an appropriate conversion of
21 tuition credits to reflect the differential in tuition caused by
22 the change of residency, if any.

23 Section 10. Payments on account of tuition shortfalls.

24 If tuition shortfalls on account of beneficiaries attending a
25 participating institution remain after payments are made to that
26 institution pursuant to section 9(g) and if such tuition
27 shortfalls are not paid on behalf of the department pursuant to
28 section 7(b), the total shortfall with respect to that
29 institution shall be paid from the fund as a separate payment.
30 The amount of shortfall payments shall be considered in

1 determining the actuarial soundness of the fund as provided for
2 in section 6(b)(2).

3 Section 11. Tuition account payment contracts.

4 Purchasers buying tuition credits for the use of
5 beneficiaries shall enter into tuition account payment contracts
6 with the department. These contracts shall be in such form as is
7 determined by the department, BUT SHALL REFLECT THAT THE
8 PURCHASE PRICE OF TUITION CREDITS CAN BE ADJUSTED ANNUALLY IN
9 ACCORDANCE WITH SECTIONS 6(B)(2) AND 9(C)(3).

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10 Section 12. Eligible beneficiaries.

11 Notwithstanding any other eligibility criteria established by
12 the board, the following shall apply:

13 (1) In order to be eligible as a beneficiary, a person
14 must be one of the following:

15 (i) A resident of this Commonwealth at the time the
16 tuition account payment contract is entered into on the
17 person's behalf.

18 (ii) A nonresident, if the tuition account payment
19 contract entered into on the person's behalf is purchased
20 by a resident of this Commonwealth, including any legal
21 entity with its principal place of business located
22 within this Commonwealth.

23 (2) The purchaser must designate a beneficiary at the
24 time the purchaser enters into a tuition account payment
25 contract.

26 (3) The purchaser may substitute for the beneficiary a
27 member of the family of the purchaser or initial beneficiary,
28 upon approval by the department.

29 Section 13. Termination and refund.

30 (a) Inability to attend a participating or nonparticipating

1 institution.--Upon termination of a tuition account, the
2 purchaser or the purchaser's designee shall receive the value of
3 the account under subsection (f) if the account is terminated
4 upon the happening of any of the following:

5 (1) The death of the beneficiary.

6 (2) The disability of the beneficiary which, in the
7 opinion of the department, would make attendance by the
8 beneficiary at a participating institution impossible or
9 unreasonably burdensome.

10 (3) Failure of the beneficiary who, in the opinion of
11 the department, has made a good faith attempt to gain
12 admission to a participating or nonparticipating institution
13 within the time limits imposed by the department.

14 (b) Decision to attend a nonparticipating institution.--Upon
15 termination of a tuition account as a result of a decision by
16 the beneficiary to attend a nonparticipating institution, the
17 department, at the direction of the purchaser or beneficiary and
18 upon presentation of proof of the beneficiary's acceptance by
19 the nonparticipating institution, shall pay to the institution
20 the tuition for the number of tuition credits purchased
21 calculated at the standard tuition level or at the tuition for a
22 specific participating institution, as designated in the tuition
23 account payment contract, or an amount equal to the value of the
24 account under subsection (f), whichever is less. Payment under
25 this subsection for any one academic year shall not exceed the
26 amount of the beneficiary's tuition or other approved
27 educational expenses for that year.

28 (c) Decision not to attend a participating or
29 nonparticipating institution.--Upon termination of a tuition
30 account as a result of a decision by the beneficiary not to

1 attend a participating or nonparticipating institution, within
2 time limits determined by the department, the purchaser or the
3 purchaser's designee shall receive 90% of the tuition for the
4 number of tuition credits purchased calculated at the standard
5 tuition level or at the tuition for a specific participating
6 institution, as designated in the tuition account payment
7 contract, or an amount equal to 90% of the value of the account
8 under subsection (f), whichever is less.

9 (d) Refunds for other reasons.--In circumstances other than
10 those set forth in this section, the department shall, by
11 regulation, provide for refunds up to but not exceeding the
12 amount authorized under subsection (c).

13 (e) Fees.--The department may impose a fee upon termination
14 of the account for administrative costs and deduct the fee from
15 the amount otherwise payable.

16 (f) Value of account.--The value of the account shall be
17 calculated by compounding annually each separate payment from
18 the time of payment to the time the account is terminated, at
19 the actual annual net earnings rate of the fund.

20 (g) Taxation of refunds.--In the event of a refund upon the
21 termination of a tuition account, to the extent the amount of
22 the refund exceeds the sum of the payments, it shall be subject
23 to taxation as income under the laws of this Commonwealth,
24 except when the refund is made pursuant to subsection (b).

25 (h) Change of beneficiary.--The substitution of the
26 beneficiary of an account pursuant to section 12(3) shall not be
27 deemed a termination of the account for purposes of this
28 section.

29 (i) Scholarship.--If a beneficiary is awarded a scholarship,
30 the terms of which cover the benefits included in tuition

1 account payment contracts purchased on behalf of the
2 beneficiary, the purchaser shall receive a refund consisting of
3 the tuition for the number of tuition credits purchased
4 calculated at the standard tuition level or at the tuition for a
5 specific participating institution, as designated in the tuition
6 account payment contract, or an amount equal to the value of the
7 account under subsection (f), whichever is less. The refund
8 under this subsection for any one academic year shall not exceed
9 the scholarship for that year.

10 Section 14. Construction of act.

11 Nothing in this act or in a tuition account payment contract
12 entered into pursuant to this act shall be construed as a
13 promise or guarantee by the department that a person will be
14 admitted to an institution of higher education, will be allowed
15 to continue to attend an institution of higher education after
16 having been admitted or will be graduated from an institution of
17 higher education.

18 Section 15. Exemption from security laws.

19 Tuition account payment contracts are exempt from any statute
20 regulating securities, including the act of December 5, 1972
21 (P.L.1280, No.284), known as the Pennsylvania Securities Act of
22 1972.

23 Section 16. State tax exemption.

24 (a) Property of fund.--The property of the fund and its
25 income and operation shall be exempt from all taxation by the
26 Commonwealth and its political subdivisions.

27 (b) Tuition credits.--The purchase and retention of tuition
28 credits and their use ~~at a participating institution~~ shall not
29 be a transaction subject to income or property taxation by the
30 Commonwealth or any of its political subdivisions.

<—

1 Section 17. Federal taxation.

2 ~~(a) Internal Revenue Service ruling. Except as provided for~~ <—
3 ~~in subsection (c), the department shall not offer or enter into~~
4 ~~a tuition account payment contract until the Internal Revenue~~
5 ~~Service or a court has issued a ruling or opinion concerning~~
6 ~~whether the purchase and retention of tuition credits and their~~
7 ~~use at a participating institution shall or shall not be a~~
8 ~~transaction which will subject purchasers or the income of the~~
9 ~~fund earned during the administration of the tuition account~~
10 ~~program to Federal income taxation.~~

11 ~~(b) Court determination. The department may initiate suit~~
12 ~~in Federal court, or appeal to a Federal court from any ruling~~
13 ~~of the Internal Revenue Service, to determine whether the~~
14 ~~purchase and retention of tuition credits and their use at a~~
15 ~~participating institution shall be a transaction which will~~
16 ~~subject purchasers or the income of the fund earned during the~~
17 ~~administration of the tuition account program to Federal income~~
18 ~~taxation. The decision as to whether an unfavorable~~
19 ~~determination should be appealed shall be made by the~~
20 ~~department.~~

21 ~~(c) Authority to contract. The department may enter into~~
22 ~~tuition account payment contracts to obtain a ruling or opinion~~
23 ~~pursuant to subsections (a) and (b).~~

24 THE DEPARTMENT MAY TAKE APPROPRIATE ACTION IN ORDER TO OBTAIN <—
25 A DETERMINATION FROM THE INTERNAL REVENUE SERVICE OR THE FEDERAL
26 COURTS AS TO WHETHER THE PURCHASE AND RETENTION OF TUITION
27 CREDITS AND THEIR USE SHALL BE A TRANSACTION WHICH WILL SUBJECT
28 PURCHASERS OR THE INCOME OF THE FUND TO FEDERAL TAXATION AND MAY
29 RESPOND TO SUCH DETERMINATION IN ANY MANNER PERMITTED UNDER THIS
30 ACT.

1 Section 18. Appropriation.

2 The sum of \$200,000 is hereby appropriated from the General
3 Fund to the Treasury Department, as a continuing appropriation
4 for the initial planning, organization and administration of the
5 tuition account program during the period from the effective
6 date of this act up to and including the period ending one year
7 after tuition credits have been offered for sale to the public.

8 Section 19. Effective date.

9 This act shall take effect immediately.