

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 772 Session of 1999

INTRODUCED BY SALVATORE, LEMMOND, KUKOVICH, WHITE, RHOADES,  
BELL, COSTA, O'PAKE, JUBELIRER, MUSTO, MURPHY, BRIGHTBILL,  
SLOCUM AND BOSCOLA, APRIL 12, 1999

REFERRED TO EDUCATION, APRIL 12, 1999

AN ACT

1 Amending the act of April 3, 1992 (P.L.28, No.11), entitled "An  
2 act providing for the advance purchase of tuition at certain  
3 institutions of higher education; establishing the Tuition  
4 Account Program Bureau within the Treasury Department and  
5 providing duties for the Treasury Department; establishing  
6 the Tuition Payment Fund; providing for tuition account  
7 payment contracts; providing for the issuance and sale of  
8 certain bonds; and further providing for duties of the  
9 Pennsylvania Higher Education Assistance Agency," expanding  
10 the scope of the act; and further providing for the short  
11 title, for declaration of policy, for definitions, for  
12 administration and for participating institutions.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. The title and section 101 of the act of April 3,  
16 1992 (P.L.28, No.11), known as the Tuition Account Program and  
17 College Savings Bond Act, are amended to read:

AN ACT

19 Providing for the advance purchase of tuition at certain  
20 institutions of higher education; establishing the Tuition  
21 Account [Program] and Tuition Savings Agreement Programs  
22 Bureau within the Treasury Department and providing duties

1 for the Treasury Department; establishing the Tuition Payment  
2 Fund; providing for tuition account payment contracts;  
3 providing for tuition savings agreements; providing for the  
4 issuance and sale of certain bonds; and further providing for  
5 duties of the Pennsylvania Higher Education Assistance  
6 Agency.

7 Section 101. Short title.

8 This act shall be known and may be cited as the Tuition  
9 Account [Program] and Tuition Savings Agreement Programs and  
10 College Savings Bond Act.

11 Section 2. The heading of Chapter 3 of the act is amended to  
12 read:

13 CHAPTER 3

14 TUITION ACCOUNT [PROGRAM] AND TUITION

15 SAVINGS AGREEMENT PROGRAMS

16 Section 3. Sections 301, 302, 303, 304(a) and (d), 305 and  
17 308 of the act are amended to read:

18 Section 301. Declaration of policy.

19 The General Assembly finds and declares as follows:

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

24 (2) It is in the best interest of the citizens of this  
25 Commonwealth to foster higher education in order to provide  
26 well-educated citizens.

27 (3) It is in the best interest of the citizens of this  
28 Commonwealth to encourage State residents to enroll in  
29 institutions of higher education.

30 (4) Providing [a mechanism] mechanisms to help assure

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

4 (5) The purposes of this chapter are to:

5 (i) Provide wide and affordable access to  
6 institutions of higher education, both public and  
7 private, for the residents of this Commonwealth.

8 (ii) Encourage attendance at institutions of higher  
9 education, both public and private, and help individuals  
10 plan for educational expenses.

11 (iii) Provide [a program] programs for the advance  
12 purchase of tuition and for tuition savings as both a  
13 means and an incentive for the citizens of this  
14 Commonwealth to provide for future higher education  
15 expenses.

16 Section 302. Definitions.

17 The following words and phrases when used in this chapter  
18 shall have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "Beneficiary." A person who meets the eligibility criteria  
21 established by this chapter and by the department and on whose  
22 behalf a purchaser enters into a tuition account payment  
23 contract.

24 "Board." The Tuition Account [Program] and Tuition Savings  
25 Agreement Advisory Board.

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

27 "Fund." The Tuition Payment Fund.

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

1     "Financial organization." An organization authorized to do  
2 business in this Commonwealth that is authorized to act as a  
3 trustee pursuant to the provisions of the Federal Employee  
4 Retirement Income Security Act of 1974 (ERISA) (Public Law 93-  
5 406, 88 Stat. 829) or an insurance company and at least one of  
6 the following:

7             (1) is licensed or chartered by the Insurance  
8 Department;

9             (2) is licensed or chartered by the Department of  
10 Banking;

11            (3) is chartered by an agency of the Federal Government;  
12 or

13            (4) is subject to the jurisdiction of the Federal  
14 Securities and Exchange Commission.

15     "Institutions of higher education." Any college or  
16 university or other institution of higher education approved by  
17 the Pennsylvania Higher Education Assistance Agency for State  
18 grant purposes, whether or not that institution is located in a  
19 state which has grant reciprocity with Pennsylvania.

20     "Internal Revenue Code." The Internal Revenue Code of 1986  
21 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or its Federal  
22 successor statute.

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

27     "Management contract." The contract executed between the  
28 Treasury Department and the financial organization selected to  
29 act as the program manager and depository for the opportunities  
30 program.

1 "Net earnings rate of the fund." The percentage return of  
2 the investment of fund assets after adjusting for any taxes and  
3 operating expenses.

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 "Participating institution." Any accredited, degree-granting  
11 college or university which is required to participate in the  
12 tuition account program under section 308.

13 "Purchaser." A person, including a natural person,  
14 corporation, association, partnership or other legal entity, who  
15 enters into a tuition account payment contract or a tuition  
16 savings agreement.

17 "Tuition." The total of all fees and charges required for  
18 attendance at an institution of higher education for a full-  
19 time, undergraduate academic year, excluding charges for room  
20 and board.

21 "Tuition account payment contract." A contract entered into  
22 by a purchaser and the department on behalf of the Commonwealth  
23 to provide for the advance purchase of tuition credits for a  
24 beneficiary attending a participating institution.

25 "Tuition credits." Credits as determined in section 309(c).

26 "Tuition savings account." An individual account established  
27 in accordance with this chapter.

28 "Tuition shortfall." The positive difference between the  
29 tuition for the number of tuition credits used at a  
30 participating institution accepting a beneficiary for enrollment

1 and the tuition payment as determined in section 309(g).

2 Section 303. Tuition Account Program Bureau.

3 The State Treasurer is directed to establish a bureau within  
4 the Treasury Department, which shall be known as the Tuition  
5 [Account Program] Account and Savings Agreement Bureau, for the  
6 purpose of establishing and administering the tuition account  
7 [program] and tuition savings agreement programs. The [program]  
8 programs shall provide for the advance purchase of tuition  
9 credits and for establishment of a tuition savings agreement for  
10 a beneficiary attending a participating institution.

11 Section 304. Tuition Account [Program] and Tuition Savings  
12 Agreement Programs Advisory Board.

13 (a) Creation.--There is created a Tuition Account [Program]  
14 and Tuition Savings Agreement Programs Advisory Board. The board  
15 shall be composed of the State Treasurer, the Chairman of the  
16 Board of Directors of the Pennsylvania Higher Education  
17 Assistance Agency, the Commissioner of Higher Education within  
18 the Department of Education, the Chairman of the Council of  
19 Higher Education and the Chancellor of the State System of  
20 Higher Education, all of whom shall be ex officio members. There  
21 also shall be 12 other members of the board. Of these 12 other  
22 members, three shall be appointed by the President pro tempore  
23 of the Senate, three shall be appointed by the Speaker of the  
24 House of Representatives and six shall be appointed by the  
25 Governor. Of the three members appointed by the President pro  
26 tempore of the Senate, one must be a member of the Senate and  
27 one must be recommended by the Minority Leader of the Senate. Of  
28 the three members appointed by the Speaker of the House of  
29 Representatives, one must be a member of the House of  
30 Representatives and one must be recommended by the Minority

1 Leader of the House of Representatives. The remaining members of  
2 the board appointed by the President pro tempore of the Senate  
3 and the Speaker of the House of Representatives must have  
4 knowledge, skill and expertise in financial affairs. Of the six  
5 members appointed by the Governor, one must be the president of  
6 a State-related institution; one must be the president of one of  
7 the institutions operating under Article XIX-A of the act of  
8 March 10, 1949 (P.L.30, No.14), known as the Public School Code  
9 of 1949; one must be the president of a university in the State  
10 System of Higher Education; and one must be a president of a  
11 private or independent four-year, degree-granting college or  
12 university located within this Commonwealth.

13 \* \* \*

14 (d) Duties.--The board shall consider, study and review the  
15 work of the Tuition Account [Program] and Tuition Savings  
16 Agreement Programs Bureau, shall advise the department on  
17 request and shall make recommendations on its own initiative for  
18 the improvement of the tuition account program and the tuition  
19 savings agreement program. The board shall report annually to  
20 the Governor and to the General Assembly, and may make such  
21 interim reports as are deemed advisable.

22 \* \* \*

23 Section 305. Powers of department.

24 In addition to the powers granted by other provisions of this  
25 chapter, the department shall have the powers necessary or  
26 convenient to carry out this chapter, including, but not limited  
27 to, the power to:

28 (1) Administer the tuition account program, the tuition  
29 savings agreement program and the fund.

30 (2) Enter into tuition account payment contracts or

1     tuition savings agreements with purchasers.

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

4           (4) Pay directly to an institution, upon the receipt of  
5     appropriate documentation, the funds which the department is  
6     obligated to transfer to the institution upon a beneficiary's  
7     use of tuition credits or pay out funds under the terms of a  
8     tuition savings agreement.

9           (5) Contract for goods and services, and engage and  
10    employ personnel, including, but not limited to, the services  
11    of private consultants, actuaries, managers, legal counsel  
12    and auditors for rendering professional, managerial and  
13    technical assistance and advice both with regard to the  
14    tuition account program and the tuition savings agreement  
15    program.

16          (6) Solicit and accept gifts, grants, loans and other  
17    aid from any person, corporation or other entity or from  
18    Federal, State or local government and participate in any  
19    Federal, State or local government program, if necessary for  
20    prudent management.

21          (7) Charge and collect administrative fees and charges  
22    in connection with any transaction, including continued  
23    participation in the tuition account program.

24          (8) Terminate tuition accounts and make refunds.

25          (9) Contract for insurance, letters of credit and  
26    collateral agreements.

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

28          (11) Adjust the terms of subsequent tuition account  
29    payment contracts.

30          (12) [Solicit answers] Seek rulings and guidance from



1 the appropriate Federal agencies regarding the application of  
2 security laws and other applicable Federal laws and  
3 regulations to the [program] programs.

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

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

8 (14.1) Make changes to the tuition savings account  
9 program as necessary to allow account owners and designated  
10 beneficiaries to obtain the Federal income tax benefits or  
11 treatment provided by section 529 of the Internal Revenue  
12 Code.

13 (14.2) Establish by rule a reasonable period for tuition  
14 savings account owners to provide notice to withdraw all or  
15 part of the balance of an account.

16 (14.3) Develop and distribute marketing and promotional  
17 material.

18 (14.4) Develop the mechanisms necessary to provide  
19 account information to tuition savings account owners and to  
20 permit dispersal of funds from tuition savings accounts.

21 (15) Promulgate regulations.

22 Section 308. Participating institutions.

23 The following institutions of higher education shall  
24 participate in the tuition account program:

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

28 (2) Universities comprising the State System of Higher  
29 Education.

30 (3) The following State-related institutions:

(i) The Pennsylvania State University.

(ii) The University of Pittsburgh.

(iii) Temple University.

(iv) Lincoln University.

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

(5) Any institution approved by the Pennsylvania Higher Education Assistance Agency for State grant purposes, whether or not the institution is located in a state which has grant reciprocity with the Commonwealth.

Section 4. The act is amended by adding sections to read:

Section 318. Qualifications of program manager.

The program manager for the tuition savings account program shall meet the following qualifications:

(1) Be a financial organization as defined under this chapter.

(2) Demonstrate its financial stability and integrity to the satisfaction of the department.

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

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

(5) Demonstrate the ability to satisfy the recordkeeping and reporting requirements of this chapter.

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

(7) Accept electronic transfers and payroll deductions.

Section 319. Selection of program manager.

Through a competitive bidding process the department shall select a single program manager based on the qualifications of

each applicant. Potential program managers that are domiciled in Pennsylvania shall receive preferential treatment in the selection process. The program manager may offer more than one investment instrument for account owners to select.

Section 320. Powers and duties of program manager.

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

(1) Take any action necessary to keep the tuition savings account program in compliance with applicable Federal law, rules and regulations.

(2) Maintain adequate records of each account, keep each account segregated and provide the department with such information as may be necessary for the department to produce statements for each account owner.

(3) Offer investment instruments to tuition savings account owners, market and promote such instruments to account owners and potential account owners.

(4) Hold all accounts for the benefit of the tuition savings account owner.

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

(6) Permit the department access to its books and records as they pertain to the tuition savings account program.

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

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

1 Section 321. Biennial review.

2 The department shall audit and review at least biennially the  
3 performance of the program manager, focusing at a minimum on its  
4 investment record, its recordkeeping and its customer service  
5 record.

6 Section 322. Contract requirements.

7 The department shall set the term for any contract with the  
8 program manager, but in no event shall a contract extend for  
9 more than five years. Contracts may be renewed. Contracts may be  
10 terminated by the department for cause. If the contract of a  
11 program manager is not renewed after the end of its term:

12 (1) No new accounts will be established with that  
13 program manager.

14 (2) Previously established accounts may be terminated  
15 and the funds rolled over to the new program manager.  
16 Accounts that remain with a program manager will remain  
17 subject to all oversight and reporting requirements  
18 established by the department.

19 (3) Additional contributions will be accepted in  
20 existing accounts.

21 Section 323. Tuition savings account applications.

22 A tuition savings account may be opened with an approved  
23 program manager by any person who desires to save for the  
24 payment of qualified higher education expenses of a designated  
25 beneficiary and who files an application to do so. The person  
26 shall be deemed a purchaser. An application shall be in the form  
27 prescribed by the department and shall include, at a minimum,  
28 the following information:

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

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

3       (3) A certification relating to no excess contributions.  
4       There shall be a nominal fee for each application.

5       Section 324. Withdrawals.

6       (a) General rule.--A purchaser may withdraw any part of the  
7       balance of a tuition savings account after having given  
8       appropriate notice.

9       (b) Qualified withdrawals.--

10       (1) The department shall adopt a standard to determine  
11       whether a withdrawal is qualified or not. For the withdrawal  
12       to be considered qualified the account owner must present  
13       certifications of qualified higher education expenses in a  
14       manner and form prescribed by the department and qualified  
15       withdrawals must be made pursuant to methods established by  
16       the department and the program manager and consistent with  
17       any agreement between those parties and the account owner.

18       (2) The department and the program manager shall adopt  
19       standard procedures relative to the distribution of  
20       withdrawals. In the case of any nonqualified withdrawal, an  
21       amount equal to 5% of the portion of the withdrawal  
22       constituting income, as determined in accordance with the  
23       principles of section 529 of the Internal Revenue Code, shall  
24       be withheld as a penalty and paid into a trust fund which  
25       shall be established by the department. The funds held in  
26       trust shall be used to provide scholarships for Pennsylvania  
27       residents through the State grant program operated by the  
28       Pennsylvania Higher Education Assistance Agency. The  
29       department shall have the authority to increase the penalty  
30       imposed so that it creates a greater than de minimis penalty

1 for purposes of qualifying the opportunities program as a  
2 qualified State tuition program under section 529 of the  
3 Internal Revenue Code.

4 Section 325. Changes.

5 (a) Designated beneficiary.--An account owner may change the  
6 designated beneficiary of an account to another individual who  
7 is a member of the same family as the original designated  
8 beneficiary, in accordance with procedures established by the  
9 department.

10 (b) Transfer.--An account owner may transfer all or a  
11 portion of an account to another tuition savings account  
12 established in the name of another member of the same family as  
13 the original designated beneficiary.

14 Section 326. Prohibitions.

15 No account owner or designated beneficiary of a tuition  
16 savings account may use an interest in an account as security  
17 for a loan. Any pledge of an interest in an account shall be of  
18 no force or effect.

19 Section 327. Limitations on contributions.

20 Contributions on behalf of any designated beneficiary may not  
21 total in excess of \$100,000 or amount to more than \$50,000 in  
22 any single calendar year. A balance in excess of these limits  
23 shall be automatically withdrawn as a nonqualified withdrawal or  
24 transferred to another account for another designated  
25 beneficiary in accordance with the provisions of this chapter.

26 Section 328. Distributions.

27 Any distribution from an account to an individual or for the  
28 benefit of an individual during a calendar year shall be  
29 reported to the Internal Revenue Service, the Department of  
30 Revenue and the account owner, designated beneficiary or

distributee to the extent required by Federal law or regulation.

An account must be open for at least three years before a  
qualified withdrawal can be made.

Section 329. Annual fees.

A reasonable annual fee may be imposed on the tuition savings  
account owner for the maintenance of the account.

Section 330. Disclosure.

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

(1) The terms and conditions for purchasing a tuition  
savings account.

(2) Any restrictions on the substitution of  
beneficiaries.

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

(4) The terms and conditions under which money may be  
withdrawn from a tuition savings 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 tuition savings  
account.

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

Section 331. Annual account statements.

Upon the conclusion of each calendar year, the program  
manager shall provide each tuition savings account owner with an

1 annual statement which reflects the activity of that account,  
2 including all contributions, imputed interest, fees and charges  
3 and qualified and nonqualified withdrawals.

4       Section 5. This act shall take effect in 60 days.