

TUITION ACCOUNT PROGRAMS AND COLLEGE SAVINGS BOND ACT

Act of Apr. 3, 1992, P.L. 28, No. 11

Cl. 24

AN ACT

Providing for the establishment of two programs for postsecondary educational savings, a guaranteed savings program and an investment program; establishing the Tuition Account Programs Bureau within the Treasury Department and providing duties for the Treasury Department; establishing tuition account funds; providing for Tuition Account Program Contracts; providing for the establishment of scholarship programs; and further providing for duties of the Pennsylvania Higher Education Assistance Agency. (Title amended June 22, 2000, P.L.418, No.58)

TABLE OF CONTENTS

Chapter 1. Preliminary Provisions

Section 101. Short title.

Chapter 3. Tuition Account Program

Section 301. Declaration of policy.

Section 302. Definitions.

Section 303. Tuition Account Programs Bureau.

Section 304. Tuition Account Programs Advisory Board.

Section 305. Powers of department.

Section 306. Tuition account programs; funds.

Section 307. Investment policies and guidelines.

Section 308. Participation in Tuition Account Guaranteed Savings Program by eligible educational institutions.

Section 309. Tuition Account Guaranteed Savings Program.

Section 309.1. Tuition Account Investment Program.

Section 309.2. General provisions governing both tuition account programs.

Section 310. Payments on account of tuition shortfalls.

Section 311. Tuition Account Program Contracts.

Section 312. Eligible beneficiaries.

Section 313. Termination and refund.

Section 314. Safeguards and protections.

Section 315. Exemption from security laws.

Section 316. State tax exemption.

Section 317. Federal taxation.

Section 318. Scholarship programs.

Section 319. Family Savings Account Program/Tuition Account Program Coordination.

Chapter 5. College Savings Bonds

Section 501. Declaration of policy.

Section 502. Definitions.

Section 503. Issuance and sale of college savings bonds.

Section 504. Nature of bonds.

Section 505. Sale of college savings bonds.

Section 506. Maximum bonds to be issued.

Section 507. Bond amortization and maturity.

Section 508. Financial aid.

Section 509. Other law.

Chapter 7. Miscellaneous Provisions

Section 701. Effective date.

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

CHAPTER 1 PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Tuition Account Programs and College Savings Bond Act.

(101 amended June 22, 2000, P.L.418, No.58)

CHAPTER 3 TUITION ACCOUNT PROGRAMS

(Hdg. amended June 22, 2000, P.L.418, No.58)

Section 301. Declaration of policy.

The General Assembly finds and declares as follows:

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

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

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

(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 chapter are to:

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

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

(iii) Provide programs for postsecondary educational savings as both a means and an incentive for the citizens of this Commonwealth to provide for future higher education expenses.

(iv) Provide to the citizens of this Commonwealth means of saving for postsecondary education that provides them with the advantages of "qualified State tuition programs" as defined by section 529 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 529).

((5) amended June 22, 2000, P.L.418, No.58)

Section 302. Definitions.

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

"Academic period." A semester, trimester or comparable period into which an eligible educational institution divides its academic year.

"Academic year." A 12-month period commencing on or after August 1 of the calendar year.

"Account owner." A person, including a natural person, corporation, association, partnership or other legal entity, who enters into a Tuition Account Program Contract.

"Beneficiary." A person who meets the eligibility criteria established by this chapter and by the department and on whose behalf an account owner enters into a Tuition Account Program Contract.

"Board." The Tuition Account Programs Advisory Board.

"Department." The Treasury Department of the Commonwealth.

"Eligible educational institution." A college, university, vocational or other postsecondary educational institution as defined by section 529 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 529).

"Fund." (Deleted by amendment).

"Funds." The Tuition Account Guaranteed Savings Program Fund and the Tuition Account Investment Program Fund.

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

"Net earnings rate of the Tuition Account Guaranteed Savings Program Fund." The percentage return of the investment of Tuition Account Guaranteed Savings Program Fund assets after adjusting for any taxes and operating expenses.

"Other educational expense credits." Tuition credits that are converted for payment of qualified higher education expenses other than tuition, as provided in section 309(h).

"Participating institution." (Deleted by amendment).

"Private institution." Any private or out-of-State public institution that is an eligible educational institution.

"Public institution." Any public eligible educational institution which is required to participate in the Tuition Account Guaranteed Savings Program under section 308.

"Purchaser." (Deleted by amendment).

"Qualified higher education expenses." Expenses, as defined by section 529 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 529).

"Tuition." The charge for an academic credit or the credits required for attendance at an eligible educational institution for a full-time undergraduate academic period.

"Tuition account payment contract." (Deleted by amendment).

"Tuition Account Program Contract." A Tuition Account Guaranteed Savings Program Contract or a Tuition Account Investment Program Contract entered into by an account owner and the department to provide for savings to meet the future qualified higher education expenses of a beneficiary attending an eligible educational institution.

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

"Tuition credit prices." The price set by the Treasury Department annually for each tuition level.

"Tuition level." The account owner's designation of the public or private institution or an average established pursuant to section 309(b) to which a contribution made pursuant to a Tuition Account Guaranteed Savings Program Contract will be applied to determine the tuition credit equivalent of the contribution.

"Tuition shortfall." The difference between the amount of the payment authorized by the account owner pursuant to section 309(d)(2) or (e)(2) and the available portion of the value of the account.

"Value of the account." For a Tuition Account Guaranteed Savings Program Contract, an amount calculated by compounding annually each separate contribution from the time of contribution to the date of calculation at the actual annual net earnings rate of the Tuition Account Guaranteed Savings

Program Fund. For a Tuition Account Investment Program Contract, an amount determined by subtracting expenses, fees and taxes, if any, from the value of the Tuition Account Investment Program Fund and then prorating the remaining net value by shares.

(302 amended June 22, 2000, P.L.418, No.58)

Section 303. Tuition Account Programs Bureau.

The State Treasurer is directed to establish a bureau within the Treasury Department, which shall be known as the Tuition Account Programs Bureau, for the purpose of establishing and administering two programs for postsecondary educational savings, a guaranteed savings program and an investment program. The guaranteed savings program shall provide that money may be contributed pursuant to a Tuition Account Guaranteed Savings Program Contract for the future payment of qualified higher educational expenses for attendance at eligible educational institutions as described in section 309. Money contributed pursuant to a Tuition Account Guaranteed Savings Program Contract shall increase in value by, at a minimum, the increase in the tuition at the tuition level designated in the contract. The investment program shall provide that money may be contributed pursuant to a Tuition Account Program Investment Contract for the future payment of qualified higher educational expenses for attendance at eligible educational institutions as described in section 309.1. The investment program shall have no guarantee.

(303 amended June 22, 2000, P.L.418, No.58)

Section 304. Tuition Account Programs Advisory Board. (Hdg. amended June 22, 2000, P.L.418, No.58)

(a) Creation.--There is created a Tuition Account Programs Advisory Board. The board shall be composed of the State Treasurer, the Chairman of the Board of Directors of the Pennsylvania Higher Education Assistance Agency, the Commissioner of Higher Education within the Department of Education, the Chairman of the Council of Higher Education and the Chancellor of the State System of Higher Education, all of whom shall be ex officio members. There also shall be 14 other members of the board. Of these 14 other members, four shall be appointed by the President pro tempore of the Senate, four shall be appointed by the Speaker of the House of Representatives and six shall be appointed by the Governor. Of the four members appointed by the President pro tempore of the Senate, two must be recommended by the Majority Leader and two must be recommended by the Minority Leader of the Senate. Of the four members appointed by the Speaker of the House of Representatives, two must be recommended by the Majority Leader and two must be recommended by the Minority Leader of the House of Representatives. The members of the board appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives must have knowledge, skill and expertise in financial affairs. Of the six members appointed by the Governor, one must be the president of a State-related institution; one must be the president of one of the institutions operating under Article XIX-A of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949; one must be the president of a university in the State System of Higher Education; and one must be a president of a private or independent four-year, degree-granting college or university located within this Commonwealth. ((a) amended June 22, 2000, P.L.418, No.58)

(b) Terms.--Board members appointed by the President pro tempore of the Senate, the Speaker of the House of Representatives and the Governor shall be appointed for terms

of four years each. Vacancies shall be filled for the unexpired terms of appointed members of the board in the same manner as original appointments.

(c) Organizational meeting.--The Commissioner of Higher Education shall call the organizational meeting of the board, at which time a chairperson shall be selected from among the members. If a vacancy in the office of chairperson occurs, such vacancy shall be filled by a selection from among the members. Meetings of the board shall be held at least quarterly or at the call of the chairperson. ((c) amended June 22, 2000, P.L.418, No.58)

(d) Duties.--The board shall consider, study and review the work of the Tuition Account Programs Bureau, shall advise the department on request and shall make recommendations on its own initiative for the improvement of the tuition account programs. The board shall report annually to the Governor and to the General Assembly, and may make such interim reports as are deemed advisable. ((d) amended June 22, 2000, P.L.418, No.58)

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

Section 305. Powers of department.

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

- (1) Administer the tuition account programs and the funds.
- (2) Enter into Tuition Account Program Contracts with account owners.
- (3) Contract and make any agreements or arrangements necessary with eligible educational institutions.
- (4) Pay directly to an eligible educational institution, an account owner, a beneficiary or a third party authorized by the account owner, upon the receipt of appropriate documentation, the funds due pursuant to a Tuition Account Program Contract.
- (5) Contract for goods and services, and engage and employ personnel, including, but not limited to, the services of private consultants, actuaries, managers, legal counsel and auditors for rendering professional, managerial and technical assistance and advice.
- (6) Solicit and accept gifts, grants, loans and other aid from any person, corporation or other entity or from Federal, State or local government and participate in any Federal, State or local government program, if necessary for prudent management or the establishment and administration of the scholarship program under section 318.
- (7) Charge and collect administrative fees and charges in connection with any transaction, including continued participation in tuition account programs.
- (8) Terminate tuition accounts and make refunds.
- (9) Contract for insurance, letters of credit and collateral agreements.
- (10) Restrict the number of participants in the programs.
- (11) Adjust the terms of Tuition Account Program Contracts.

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

(13) Limit the times and dates during which Tuition Payment Program Contracts may be entered into.

(14) Consider means whereby an account owner may have contributions deducted from salary.

(15) Promulgate regulations.

(16) Notwithstanding any other provision of this act, administer the tuition account programs in such manner as to ensure and maintain their status as "qualified State tuition programs" as defined in section 529 of the Internal Revenue Code of 1986 (Public Law, 26 U.S.C. § 529).

(305 amended June 22, 2000, P.L.418, No.58)

Section 306. Tuition account programs; funds.

(a) Establishment.--There are established in the State Treasury two special funds to be known as the Tuition Account Guaranteed Savings Program Fund and the Tuition Account Investment Program Fund. The money in these funds shall be invested in accordance with this chapter. All money in each of the funds is hereby appropriated to the department on a continuing basis to carry out the provisions of this chapter.

(b) Administration.--

(1) The assets of each of the funds shall be preserved, invested and expended solely pursuant to and for the purposes set forth in this chapter.

(2) The department shall obtain appropriate actuarial assistance to establish, maintain and certify that the Tuition Account Guaranteed Savings Program Fund is sufficient to defray its obligations and shall annually evaluate, or cause to be evaluated, its actuarial soundness. If the department finds a need for additional assets in order to preserve actuarial soundness, it may adjust the tuition credit prices to ensure such soundness. If the department finds that actuarial soundness can be maintained with fewer assets, it may adjust the tuition credit prices or distribute surplus assets in excess of those needed to maintain the actuarial soundness of the Tuition Account Guaranteed Savings Program Fund as specified in paragraph (2.1).

(2.1) (i) Annually, after the department's fiscal year has ended, the department shall determine whether the Tuition Account Guaranteed Savings Program Fund has been actuarially certified as being sufficient to defray its obligations and whether the actuarial soundness of the Tuition Account Guaranteed Savings Program Fund, as actuarially evaluated, can be maintained with fewer assets and, if so, the dollar value of any excess surplus assets. In making the determination, the department shall consider the projected costs and expenses of the Tuition Account Guaranteed Savings Program, including the Tuition Account Guaranteed Savings Program Fund, as well as any material subsequent events occurring between the end of the fiscal year and the date on which the determination is made.

(ii) If the department determines that there are assets in excess of those needed to maintain actuarial soundness of the Tuition Account Guaranteed Savings Program Fund and the assets actuarially certified as sufficient to defray the costs of the Tuition Account Guaranteed Savings Program, the department may, but shall not be obligated to, distribute the dollar value of any excess surplus assets by making additional contributions,

which will be converted to the equivalent of tuition credits pursuant to section 309(c), into accounts established pursuant to Tuition Account Guaranteed Savings Program Contracts that have not been terminated as of the date of determination.

(iii) Any distribution of any excess surplus assets of the fund shall be made on an equitable basis as determined by the department.

(3) The department, in conjunction with the board, shall make an annual report to the Governor and the General Assembly showing the condition of each of the funds. This report shall contain the findings and recommendations of the department and the board and the recommendations of any private consultant under contract or volunteering services to the department or board. The report shall detail actions taken or needed to modify the Tuition Account Guaranteed Savings Program to insure the fiscal sufficiency of the Tuition Account Guaranteed Savings Program Fund to meet its obligations under this chapter. With regard to the Tuition Account Guaranteed Savings Program Fund, the report shall address the relationship between existing and projected net investment returns and existing and projected tuition levels and address the advisability or necessity of modifying the authorized investment of fund assets, the tuition credit price, the amount of administrative fee or charges or the amount of refunds offered upon termination of a Tuition Account Guaranteed Savings Program Contract. Further, consistent with the goal of providing for the maintenance of the fiscal sufficiency of the fund, the report regarding each of the funds shall detail those actions taken or needed to modify the programs so that the funds, account owners and beneficiaries will receive favorable treatment for purposes of Federal taxation.

(c) Composition.-- Each of the funds shall consist of:

(1) All contributions made by account owners pursuant to Tuition Account Program Contracts and all interest, earnings and additions thereto.

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

(d) Operating and administrative costs.--The department shall, through the Governor, annually submit to the General Assembly a budget covering the operating and administrative expenses of the Tuition Account Programs Bureau and the board. Upon approval by the General Assembly in an appropriation bill, expenses as incurred by the Tuition Account Programs Bureau and the board shall be paid from the fees, charges and investment earnings of the funds, proportionately taken from each fund on an equitable basis as determined by the department, or from any other available funds.

(e) Repayment of initial appropriation.--The department shall repay from the fees, charges and investment earnings of the Tuition Account Guaranteed Savings Program Fund to the General Fund any money appropriated for the initial planning, organization and administration of the tuition account program established at the time of the original enactment of this act. The repayment shall take place within a ten-year period commencing September 1, 1995.

(f) Limitation.--Notwithstanding any other provision of law, the Treasury Department and the board shall not pledge the credit or taxing powers of the Commonwealth. Any obligation or debt under this act shall not be deemed an obligation or debt

of the Commonwealth, nor shall the Commonwealth be liable to pay principal and interest on obligations or to offset any loss of principal and interest earnings on investments made by the Treasury Department or recommended by the board pursuant to this act. Tuition Account Program Contracts issued by the Treasury Department with an account owner shall contain a plain language statement explaining the limitation contained in this subsection.

(306 amended June 22, 2000, P.L.418, No.58)

Section 307. Investment policies and guidelines.

(a) General rule.--The policies governing the investment of the Tuition Account Guaranteed Savings Program Fund shall be directed to obtaining sufficient income to meet the fund's obligations under this chapter, maintaining necessary reserves and covering operating expenses. The policies governing the investment of the Tuition Account Investment Program Fund shall be directed to providing for an appropriate balance of risk, liquidity and return commensurate with the management of a prudent investor. With regard to each of the funds, the department, its investment managers, program managers and trustees shall have the authority to invest and reinvest the funds in all lawful investments.

(b) Investment manager and trustee.--The department may contract with one or more persons or other legal entities to serve as investment managers, program managers and trustees to the department on behalf of either or both of the tuition account programs. If the department contracts with investment managers, program managers or trustees in order to fulfill the objectives of the tuition account programs, the investment managers, program managers and trustees shall work with the department to create an investment program or programs, to develop investment portfolios and to supervise investments and the investment programs selected. If the department contracts with investment managers, program managers and trustees, the department may require that the investment managers, program managers and trustees agree, based on actuarial projections of program costs and expenses supplied by the department, to meet any obligations of the Tuition Account Guaranteed Savings Program Fund if, as a result of the imprudent selection or supervision of investments or the investment program by the investment managers, program managers or trustees, the Tuition Account Guaranteed Savings Program Fund is not fiscally sufficient to meet the fund's obligations under this chapter. The department, through contract, may also impose liability on investment managers, program managers and trustees for losses incurred by the Tuition Account Guaranteed Savings Program Fund, the Tuition Account Investment Program Fund or the account owners as a result of the investment managers', program managers' and trustees' negligent, fraudulent or imprudent selection or supervision of investments.

(307 amended June 22, 2000, P.L.418, No.58)

Section 308. Participation in Tuition Account Guaranteed Savings Program by eligible educational institutions.

(a) Public institutions.--The following public institutions of higher education shall participate in the Tuition Account Guaranteed Savings Program:

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

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

(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 other eligible educational institution owned by the Commonwealth.

(b) Private institutions.--A private institution may enter into an agreement with the department through which the institution, under terms mutually agreeable to the institution and the department, agrees to be a private institution that account owners may choose when designating their tuition level pursuant to a Tuition Account Guaranteed Savings Program Contract. The terms of the agreement shall include, but not be limited to, the determination of tuition credit prices, terms of redemption of tuition credits at the institution, conversion of tuition credits contributed at other tuition levels to tuition at the institution and appropriate conversion of tuition credits to other educational expense credits.

(308 amended June 22, 2000, P.L.418, No.58)

Section 309. Tuition Account Guaranteed Savings Program.

(a) General description.--Each contribution made pursuant to a Tuition Account Guaranteed Savings Program Contract will be considered the equivalent of a purchase of tuition credits at the tuition level designated by the account owner in the Tuition Account Guaranteed Savings Program Contract. All contributions will be held in a beneficiary's account and will be converted to the tuition level of the institution to be attended by the beneficiary. At the time of redemption, the tuition to be paid will be calculated based on the tuition level designated and the institution being attended as described in this section. A public institution attended by a beneficiary shall accept that beneficiary's tuition credits when presented. Payments on account of tuition shortfalls shall be made as provided for in section 310.

(b) Tuition levels.--

(1) The department shall annually establish three average tuition levels for public institutions corresponding approximately to the average tuition charges for that year at the Commonwealth's community colleges, at universities in the State System of Higher Education and at State-related universities. The department may annually establish an average tuition level or levels for private institutions corresponding to average tuition charges at private institutions, as the department deems appropriate.

(2) A contribution may be made at the tuition level designated in the Tuition Account Guaranteed Savings Program Contract. With the approval of the department, an account owner may change the designated tuition level.

(c) Tuition credits.--Contributions made pursuant to a Tuition Account Guaranteed Savings Program Contract will be converted to the equivalent amount of tuition credits as follows:

(1) A contribution made pursuant to a Tuition Account Guaranteed Savings Program Contract shall be divided by the tuition credit price in the year of contribution at the tuition level designated by the account owner.

(2) For contributions made during the period from September 1 to August 31, tuition credit prices for the corresponding academic year shall be used.

(3) The number of tuition credits calculated at the time of contribution in accordance with paragraphs (1) and (2) may be reduced in a manner determined by the department reasonably to reflect potential investment loss resulting from the time of year when the contribution is made.

(d) Process for public institutions.--The process for certifying tuition, converting tuition credits, issuing and redeeming tuition credits and making tuition payments for public institutions shall be as follows:

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

(2) Upon application, the department shall issue to an account owner a statement of accumulated tuition credits available for the payment of qualified higher education expenses for a specific academic period at the specific public institution or the public institution average tuition level designated by the account owner. In the event the account owner decides to redeem the available tuition credits, the account owner shall notify the department of the institution at which the beneficiary intends to enroll. In the event the institution is:

(i) The public institution last designated by the account owner in the Tuition Account Guaranteed Savings Program Contract as the tuition level, the account owner shall submit to the department adequate documentation of enrollment, the qualified higher education expenses and the number of credits or dollar value of the credits that the account owner has decided to redeem. The account owner shall authorize payment of that amount to the institution, a specified third party, the account owner and/or beneficiary. Payment shall be made as specified in subsection (d)(3).

(ii) A public institution other than that last designated by the account owner in the Tuition Account Guaranteed Savings Program Contract as the tuition level, a conversion shall be made pursuant to subsection (g) and the department shall issue a revised statement of accumulated tuition credits and their dollar value available for payment of qualified higher education expenses at the newly designated public institution. The account owner shall submit to the department adequate documentation of enrollment, the qualified higher education expenses and the number of credits or dollar value of the credits that the account owner has decided to redeem. The account owner shall authorize payment of that amount to the institution, a specified third party, the account owner and/or beneficiary. Payment shall be made as specified in subsection (d)(3).

(iii) A private institution that has not entered into an agreement with the department pursuant to section 308(b), the available tuition credits shall be redeemable for the payment of qualified higher education expenses at the value they would have had if they had been redeemed at the tuition level last designated by the account owner in the Tuition Account Guaranteed Savings Program Contract. The account owner shall submit to the department adequate documentation of enrollment, the

qualified higher education expenses and the number of credits or dollar value of the credits that the account owner has decided to redeem. The account owner shall authorize payment of that amount to the institution, a specified third party, the account owner and/or beneficiary. Payment shall be made as specified in subsection (d) (3).

(iv) A private institution that has entered into an agreement with the department pursuant to section 308(b), payment shall be governed by the terms of the agreement, provided, however, that in no event shall the payment be less than what would have been paid if the beneficiary were attending a private institution that has not entered into an agreement with the department. Payment shall be made as specified in the agreement.

(3) Upon submission of such documentation, the department shall make the payment as authorized by the account owner. Before making the payment authorized by the account owner, the department shall determine whether the available portion of the value of the account equals or exceeds the authorized payment. If it does not equal or exceed the authorized payment, two separate payments shall be made. The first payment shall be in the amount of the available portion of the value of the account. The second payment shall be in the amount of the difference between the amount of the payment authorized by the account owner and the available portion of the value of the account, and it shall be paid pursuant to the tuition shortfall provision of section 310.

(e) Process for private institution average tuition levels.--The process of establishing private institution average tuition credit prices, redeeming those tuition credits and making tuition payments when an account owner has designated a private institution average tuition level shall be as follows:

(1) On or before August 31, the department shall determine the average tuition credit price or prices for average tuition level or levels for private institutions established pursuant to subsection (b) for the academic year beginning on or after August 1 of that year.

(2) Upon application, the department shall issue to an account owner a statement of accumulated tuition credits available for the payment of qualified higher education expenses for a specific academic period at the private institution average tuition level designated by the account owner. In the event the account owner decides to redeem the available tuition credits, the account owner shall notify the department of the public or private institution at which the beneficiary intends to enroll. In the event the institution is:

(i) A public institution, the process for conversion and payment shall be as set forth in subsections (d) (3) and (g).

(ii) A private institution that has not entered into an agreement with the department pursuant to section 308(b), the available tuition credits shall be redeemable at the average tuition credit price determined by the department before adjustments, if any, made pursuant to section 306(b) (2), of the designated tuition level established by the department for the year in which they are redeemed. The account owner shall submit to the department adequate documentation of enrollment, the qualified higher education expenses and the number of

credits or dollar value of the credits that the account owner has decided to redeem. The account owner shall authorize payment of that amount to the institution, a specified third party, the account owner and/or beneficiary. The department shall make the payment in substantially the same manner as specified in subsection (d)(3). Payment under this subsection for any one academic period shall not exceed the amount of the beneficiary's tuition and other qualified higher education expenses for that academic period. If the average tuition level in the year of redemption is insufficient to pay the actual tuition, the department shall have no obligation or authority to pay the insufficiency.

(iii) A private institution that has entered into an agreement with the department pursuant to section 308(b), payment shall be governed by the terms of the agreement, provided, however, that in no event shall the payment be less than what would have been paid if the beneficiary were attending a private institution that has not entered into an agreement with the department.

(f) Process for specific private institutions with which the department has an agreement.--The making and redeeming of contributions for use at private institutions that have entered into agreements with the department pursuant to section 308(b) shall be governed by the terms of those respective agreements. Upon request of an account owner who has made contributions at a tuition level of a specific private institution, a conversion to an average tuition level, a specific public institution or a different private institution that has entered into an agreement with the department, if permitted by the terms of that particular agreement between the department and that particular private institution, shall be made using substantially the same procedure as specified in subsection (g). Upon a decision by the beneficiary for whom contributions have been made at a tuition level of a private institution that has entered an agreement with the department pursuant to section 308(b) to attend a different private institution that has entered into an agreement with the department but for which the terms of that particular agreement do not provide for a conversion, or to attend a different private institution that has not entered into an agreement with the department pursuant to section 308(b), at the direction of the account owner, payment shall be made in substantially the same manner as is specified in subsection (e)(2) except that in no event shall the department pay more than it would have paid had the beneficiary attended the previously designated private institution.

(g) Conversion of tuition credits.--At any time during the existence of the tuition account payment contract, upon the request of an account owner, the department may convert tuition credits for contributions made at any tuition level to any other tuition level. The method by which the conversion is made shall be determined by the department. Following conversion, the department shall issue to the account owner a statement of the number of tuition credits converted.

(h) Other uses of tuition credits.--The department shall permit the use of tuition credits for master's degree and other postbaccalaureate programs at eligible educational institutions, after an appropriate conversion. The department also may permit tuition credits to be converted into other educational expense credits to be applied for the payment of qualified higher

education expenses other than tuition. Use of tuition credits for payment of qualified higher education expenses other than tuition shall correspondingly decrease the number of tuition credits available for payment of tuition. The Commonwealth, the department or the Tuition Account Guaranteed Savings Program Fund shall not be obligated and is not authorized to make up any deficiency in tuition credits available for payment of tuition resulting from the use of tuition credits for payment of qualified higher education expenses other than tuition.

(i) Course load or credit hours.--A beneficiary attending an eligible educational institution may apply tuition credits to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.

(j) Residency.--The tuition credit price shall be determined with reference to the residency of the beneficiary at the time a contribution is made pursuant to a Tuition Account Guaranteed Savings Program Contract, except that, for a resident beneficiary, an account owner may elect to save at a nonresident rate. If the residency of the beneficiary at the time the credits are redeemed is different from the residency designated in the Tuition Account Guaranteed Savings Program Contract or as thereafter changed with the consent of the department, there shall be an appropriate conversion of tuition credits to reflect the differential in tuition caused by the change of designated residency, if any.

(k) (Deleted by amendment).

(l) (Deleted by amendment).

(m) (Deleted by amendment).

(309 amended June 22, 2000, P.L.418, No.58)

Section 309.1. Tuition Account Investment Program.

The department shall establish an investment plan that defines the Tuition Account Investment Program structure and sets forth investment policies and guidelines to be utilized in administering the program and may, in its discretion, obtain the services of investment managers, program managers and trustees as described in section 307(b) to assist in establishing and administering the plan. The department, pursuant to a Tuition Account Investment Program Contract, shall specify the minimum and maximum amounts of contributions, the terms and conditions for transferring the Tuition Account Investment Program Contract to another account owner or substituting a beneficiary for the originally named beneficiary, the terms and conditions for withdrawing contributions or terminating the Tuition Account Investment Program Contract, the method and procedures for making payments pursuant to the Tuition Account Investment Program Contracts for the payment of beneficiaries' qualified higher education expenses and all other rights and obligations of the account owner and the department.

(309.1 added June 22, 2000, P.L.418, No.58)

Section 309.2. General provisions governing both tuition account programs.

(a) Levy, execution and security for loans.--A tuition account or any legal interest therein shall not be subject to attachment, levy or execution by any creditor of an account owner or beneficiary and shall not be used as security for a loan.

(b) Period of participation.--Notwithstanding any of the provisions of this chapter, the following shall apply:

(1) Except as provided in paragraph (2), a minimum period of one year must elapse between the time a

contribution is made pursuant to a Tuition Account Program Contract and the time that contribution and any increase in its value may be used for payment of qualified higher education expenses pursuant to section 309 or 309.1.

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

(c) Student aid.--Any amounts contributed pursuant to a Tuition Account Program Contract and any increase in the value thereof shall not be used in calculating personal asset contributions for determining eligibility and need for student loan programs, student grant programs or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by Federal law.

(d) Excess contributions.--The department shall institute adequate safeguards to prevent contributions to an account or multiple accounts that are in excess of those necessary to provide for the qualified higher education expenses of the beneficiary of that account or accounts, as specified in section 529 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 529).

(e) Cash contributions.--A contribution made pursuant to a Tuition Account Program Contract may only be made in cash, which may at the department's discretion include checks, money orders, credit cards or other similar methods.

(f) Transfers between programs.--The department, pursuant to a Tuition Account Program Contract, may specify the terms and conditions under which transfers of contributions and any increased value thereof may be made from one account to another by an account owner who has entered into a Tuition Account Guaranteed Savings Program Contract and a Tuition Account Investment Program Contract. Nothing in this subsection shall be construed to require the department to allow such transfers.

(309.2 added June 22, 2000, P.L.418, No.58)

Section 310. Payments on account of tuition shortfalls.

If there are tuition shortfalls on account of beneficiaries of Tuition Account Guaranteed Savings Program Contracts attending a public institution or redeeming tuition credits at a private institution average tuition level and if such tuition shortfalls are not paid on behalf of the department pursuant to section 307(b), the total shortfall with respect to that institution shall be paid from the earnings of the fund as a separate payment pursuant to section 309(d)(3) or (e)(2)(ii). The amount of shortfall payments shall be considered in determining the actuarial soundness of the fund as provided for in section 306(b)(2).

(310 amended June 22, 2000, P.L.418, No.58)

Section 311. Tuition Account Program Contracts.

Account owners making contributions for the use of beneficiaries shall enter into Tuition Account Program Contracts with the department. These contracts shall be in such form as is determined by the department but with regard to Tuition Account Guaranteed Savings Program Contracts shall reflect that the tuition credit prices can be adjusted annually.

(311 amended June 22, 2000, P.L.418, No.58)

Section 312. Eligible beneficiaries.

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

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

(i) A resident of this Commonwealth at the time the Tuition Account Program Contract is entered into on the person's behalf.

(ii) A nonresident if the Tuition Account Program Contract entered into on the person's behalf is entered into by a resident of this Commonwealth, including any legal entity with its principal place of business located within this Commonwealth.

(iii) A nonresident if the Tuition Account Program Contract is for a tuition account investment contract.

(2) The account owner must designate a beneficiary at the time the account owner enters into a Tuition Account Program Contract unless the contract is made pursuant to a scholarship program.

(3) Unless the Tuition Account Program Contract is established as a scholarship pursuant to section 318, the account owner may substitute for the current beneficiary only a member of the family of that beneficiary upon approval by the department. "Member of the family" is defined by section 529 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 529).

(312 amended June 22, 2000, P.L.418, No.58)

Section 313. Termination and refund.

(a) Death or disability.--Upon termination of a Tuition Account Program Contract, the account owner or the account owner's designee shall receive the value of the account if the account is terminated upon the happening of any of the following:

(1) The death of the beneficiary.

(2) The disability of the beneficiary which, in the opinion of the department, would make attendance by the beneficiary at an eligible educational institution impossible or unreasonably burdensome.

(3) (Deleted by amendment).

(b) Refunds for other reasons.--

(1) Except as provided in paragraph (3), refunds for Tuition Account Guaranteed Savings Program Contracts for reasons other than those set forth in subsection (a) shall be the sum of the contributions made pursuant to the Tuition Account Guaranteed Savings Program Contract plus 90% of the difference between the tuition credit prices in the years of contribution and the increased value of the tuition credits had they been redeemed in the academic year of termination.

(2) Except as provided in paragraph (3), refunds for Tuition Account Investment Program Contracts for reasons other than those set forth in subsection (a) shall be:

(i) in the event the value of the account is less than or equal to the sum of the contributions made pursuant to the Tuition Account Investment Program Contract, the value of the account; and

(ii) in the event the value of the account is more than the sum of the contributions made pursuant to the Tuition Account Investment Program Contract, the sum of the contributions plus 90% of the difference between the sum of the contributions and the value of the account.

(3) The board may alter the refund provisions set forth in paragraphs (1) and (2) so long as such alterations are consistent with the requirements for "qualified State tuition programs" provided in section 529 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 529).

(4) If a refund is requested under this subsection within the 12 months following the account owner's changing the tuition level designated in a Tuition Account Guaranteed Savings Program Contract, the refund shall be calculated using the value of the tuition credits of the previous or current tuition level, whichever is less.

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

(d) Taxation of refunds.--In the event of a refund upon the termination of a Tuition Account Program Contract, to the extent the refund amount an account owner receives exceeds the sum of the contributions, it shall be subject to taxation as income under the laws of this Commonwealth.

(e) Change of beneficiary or type of tuition account program.--The substitution of the beneficiary of an account pursuant to section 312(3) or the transfer of contributions, and any increased value thereof, from one type of tuition account program to the other shall not be deemed a termination of the account for purposes of this section.

(f) Scholarship.--If a beneficiary is awarded a scholarship, the terms of which cover the benefits included in Tuition Account Program Contracts entered into on behalf of the beneficiary, the account owner may receive a refund. For Tuition Account Guaranteed Savings Program Contracts, the refund shall consist of the value, in the academic award year the scholarship is paid, of the available tuition credits. For Tuition Account Investment Program Contracts, the refund shall consist of the available portion of the value of the account. The refund under this subsection for any one academic award year shall not exceed the scholarship for that year.

(g) (Deleted by amendment).

(h) (Deleted by amendment).

(i) (Deleted by amendment).

(313 amended June 22, 2000, P.L.418, No.58)

Section 314. Safeguards and protections.

(a) General rule.--Nothing in this chapter or in a Tuition Account Program Contract entered into pursuant to this chapter shall be construed as a promise or guarantee by the department that a person will be admitted to an institution of higher education, will be allowed to continue to attend an institution of higher education after having been admitted or will be graduated from an institution of higher education.

(b) Disclosure.--Tuition Account Program Contracts shall disclose the following information in writing to each account owner or prospective owner of a tuition account:

(1) The terms and conditions for purchasing a tuition 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 established in section 309.1.

(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 tuition account.

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

(c) Construction.--Nothing in this chapter can be construed to:

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

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

(314 amended June 22, 2000, P.L.418, No.58)

Section 315. Exemption from security laws.

Tuition Account Program Contracts are exempt from any statute regulating securities, including the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

(315 amended June 22, 2000, P.L.418, No.58)

Section 316. State tax exemption.

(a) Property of funds.--The property of each of the funds and their income and operation shall be exempt from all taxation by the Commonwealth and its political subdivisions.

(b) Contributions.--Contributions made pursuant to a Tuition Account Program Contract; any increase in the value of those contributions, the retention, or transfer during life or as a result of death of any legal interest in a Tuition Account Program Contract; and payment of qualified higher education expenses of beneficiaries made pursuant to Tuition Account Program Contracts shall be exempt from all taxation by the Commonwealth and its political subdivisions.

(316 amended June 22, 2000, P.L.418, No.58)

Section 317. Federal taxation.

The department may take appropriate action in order to obtain a determination from the Internal Revenue Service or the Federal courts as to whether contributions made pursuant to a Tuition Account Program Contract, the increase in value of such contributions and payment of qualified higher education expenses pursuant to a Tuition Account Program Contract shall be a transaction which will subject account owners or the income of either or both of the funds to Federal taxation and may respond to such determination in any manner permitted under this chapter.

(317 amended June 22, 2000, P.L.418, No.58)

Section 318. Scholarship programs.

(a) Establishment.--The Commonwealth, any political subdivision of the Commonwealth and any organization that is exempt from Federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501), including the department, if not prohibited by section 529 of the Internal Revenue Code of 1986, may establish a scholarship program through a Tuition Account Program Contract to award scholarships. Any scholarship program created pursuant to this section shall be registered with the department and shall comply with such requirements as the department may establish. Scholarship beneficiaries shall be selected by the entity establishing the scholarship program in accordance with criteria established by the entity, and the entity may change the beneficiary as permitted by section 529 of the Internal Revenue Code of 1986.

(b) Contributions.--Any person or legal entity may make contributions on behalf of a scholarship program that is or is to be established in accordance with this section under the same terms and conditions as those that apply to nonscholarship tuition accounts. A beneficiary of a Tuition Account Program Contract entered into as part of a scholarship program shall be entitled to payment of qualified higher education expenses

under the same terms and conditions as those that apply to beneficiaries of nonscholarship tuition accounts.

(c) No requirement.--Nothing in this act shall require the creation of a scholarship account or authorize the use of State funds for such accounts.

(318 added June 22, 2000, P.L.418, No.58)

Section 319. Family Savings Account Program/Tuition Account Program Coordination.

(a) Program coordination.--A saver under the Family Savings Account Program (FSA) established under Chapter 21 of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, may transfer the saver's Family Savings Account contributions into a Tuition Account Program (TAP) contract and become an FSA/TAP account owner if the FSA saver has successfully completed all the terms of the FSA saver's approved plan pursuant to section 2102(e) of the Job Enhancement Act and the FSA saver's approved plan specifies education as the eligible use. The FSA saver does not have to be the beneficiary of the education.

(b) Match payment.--The match to be provided pursuant to Chapter 21 of the Job Enhancement Act shall be paid by the FSA saver's service provider directly to the Treasury Department for deposit in the FSA/TAP saver's selected Tuition Account Program account.

(c) Waiver of restrictions.--The restrictions on withdrawal of the FSA match pursuant to section 2102(f)(3) of the Job Enhancement Act shall not apply to an FSA/TAP account owner.

(d) Termination.--In the event an FSA/TAP account owner terminates the Tuition Account Program contract pursuant to section 313, the amount refunded to the FSA/TAP account owner shall exclude the match made pursuant to section 2102(f) of the Job Enhancement Act and any increase in value resulting from that match. The Treasury Department shall pay the match to the Department of Community and Economic Development.

(e) Agency coordination.--The Treasury Department and the Department of Community and Economic Development may issue regulations to further facilitate coordination of the Tuition Account Program and the Family Savings Account Program.

(319 added June 22, 2000, P.L.418, No.58)

CHAPTER 5 COLLEGE SAVINGS BONDS

Section 501. Declaration of policy.

The General Assembly finds and declares as follows:

(1) For the benefit of the citizens of this Commonwealth, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of their continued prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills.

(2) To achieve the ends stated in paragraph (1), it is of the utmost importance that residents of this Commonwealth be provided with investment alternatives to enhance their financial access to institutions of higher education.

(3) Enrollment in institutions of higher education located within this Commonwealth should be encouraged.

Section 502. Definitions.

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

"Agency." The Pennsylvania Higher Education Assistance Agency.

"Bond." A certificate or evidence of a debt on which the issuing governmental body promises to pay the bondholders a specified amount of interest for a specified length of time and to repay the loan on the expiration date.

"College savings bonds." A class of bonds issued by the Commonwealth as zero coupon bonds pursuant to any unissued debt authorization and the provisions of this chapter.

"Institution of higher education." All public and private colleges and universities located within this Commonwealth, including, but not limited to, State-owned and State-related colleges and universities, member institutions of the State System of Higher Education and community and junior colleges.

"Issuing officials." The Governor, the Auditor General and the State Treasurer.

"Zero coupon bond." A bond sold at an initial purchase price below its maturity value which does not entitle its holder to receive periodic payments of interest but whose maturity value is payable in one payment on a fixed date.

Section 503. Issuance and sale of college savings bonds.

(a) General rule.--In order to provide investors with investment alternatives to enhance their financial access to institutions of higher education, and in furtherance of the public policy of this chapter, a portion of the bonds issued should be designated as college savings bonds. Where feasible, the issuing officials shall follow the recommendation of the agency and designate the issue, in whole or in part, as college savings bonds.

(b) Annual recommendation.--The agency shall annually recommend the amount needed to carry out this chapter and shall so notify the issuing officials.

Section 504. Nature of bonds.

Bonds to be issued and sold as college savings bonds shall be designated by the issuing officials as college savings bonds in the proceedings authorizing the issuance of such bonds. College savings bonds may be sold at such prices and in such manner as may be determined by the issuing officials.

Section 505. Sale of college savings bonds.

(a) General rule.--College savings bonds may be sold at competitive or negotiated sale, as directed by the issuing officials, for prices as the issuing officials shall determine. However, a negotiated sale shall be authorized only upon a determination by the issuing officials that a negotiated sale will result in either a more efficient sale of college savings bonds or greater access to the bonds by investors who are residents of this Commonwealth. Prior to the initial sale of the college savings bonds, the issuing officials shall develop a plan that will insure purchasing access to the individual investor as well as equitable geographic availability to all citizens of this Commonwealth.

(b) Subscriptions.--Whether college savings bonds are sold by competitive or negotiated sale, the issuing officials may direct the State Treasurer, the agency, a department or agency under the jurisdiction of the Governor, or may enter into any agreement or agreements with banks, trust companies or other firms capable of performing such duties, to accept subscriptions and payments for the purchase of college savings bonds. At the option of the issuing officials, the subscriptions shall be

filled by the college savings bond underwriters, or the issuing officials shall sell bonds to subscribers residing in this Commonwealth at market prices and rates of accretion as the issuing officials shall establish.

(c) Accretion rates.--College savings bonds may bear a fixed or variable accretion rate. To the extent variable rate debt is issued, the issuing officials are empowered to enter into contractual arrangements with third parties, whereby such parties agree to absorb accretion rate risk in exchange for assuming a fixed-rate payment schedule or other consideration pursuant to accretion rate swaps, hedges and other financial devices, in order to reduce accretion rate risk to the Commonwealth. No agreement or arrangement with third parties to absorb accretion rate risk as described in this subsection shall be entered into unless, in the judgment of the State Treasurer, adequate provision has been made to collateralize or otherwise protect the ability of the Commonwealth to realize its interests under the agreement or arrangement consistent with the provisions of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 506. Maximum bonds to be issued.

College savings bonds shall not be issued in any given fiscal year in an aggregate principal amount greater than one-third of the total aggregate principal amount of general obligation bonds projected to be issued by the Commonwealth during that fiscal year or \$100,000,000, whichever is greater. For purposes of calculating the aggregate principal amount of college savings bonds for purposes of this chapter or for calculating debt within the meaning of any constitutional or statutory limitation on the incurring of debt, the aggregate principal amount of any discount bond shall be the aggregate of the initial offering prices at which such bonds are offered for sale to the public, without reduction for underwriter's discount or other expenses.

Section 507. Bond amortization and maturity.

The issuing officials shall provide for the amortization of debt represented by college savings bonds over the term of the bonds as prescribed by the Constitution for debt to be amortized in substantial and regular amounts. The first amortization shall be due prior to the expiration of a period equal to one-tenth of the term of the debt. For the purposes of this chapter, bonds are amortized in substantial and regular amounts if they mature annually or semiannually and the largest initial principal amount scheduled to mature in any one bond year does not exceed an amount equal to three times the average of the annual initial principal amounts for all other bond years of the college savings bond issue. Within the limits imposed by the Constitution and this chapter, the issuing officials shall establish periodic maturity amounts so as to reasonably meet anticipated demand by individual investors for the various maturities, but in no case shall a college savings bond have a maturity date greater than 20 years following the date of original issue.

Section 508. Financial aid.

No contributions toward the purchase of the first \$25,000 in maturity value of college savings bonds shall be considered in evaluating the financial situation of a student or be deemed a financial resource of or a form of financial aid or assistance to the student for purposes of determining the eligibility of the student for any scholarship, grant or monetary assistance awarded by the agency, the Commonwealth or any agency thereof; nor shall the first \$25,000 in maturity value of college savings bonds provided for a qualified student under this chapter reduce

the amount of any scholarship, grant or monetary assistance which the student is entitled to be awarded by the agency, the Commonwealth or any agency thereof as provided by law.
Section 509. Other law.

Except as inconsistent with this chapter, all other provisions of law relating to debt authorization apply to bonds issued under this chapter.

CHAPTER 7 MISCELLANEOUS PROVISIONS

Section 701. Effective date.

This act shall take effect immediately.