

ASSEMBLY, No. 2865

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1997

By Assemblyman BAGGER

1 AN ACT establishing a New Jersey family college savings program and
2 providing gross income tax incentives for certain college savings,
3 supplementing Titles 18A and 54A of the New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Sections 1 through 8 of this act shall be known and may be cited
9 as the "New Jersey College Savings Plan Act."

10
11 2. The Legislature hereby finds and declares that promoting the
12 education of the residents of this State and helping students afford the
13 expenses of higher education are in the best interests of the State
14 government; that tuition costs at public and private institutions of
15 higher education are difficult for many to afford: that fostering higher
16 education to provide well-educated citizens is in the best interests of
17 the State; that fostering the ability of students to choose which
18 institution of higher education to attend is in the best interest of the
19 State; that students in the secondary schools tend to achieve a higher
20 standard of performance when the payment of tuition for their higher
21 education is secured; that promoting individual savings for college is
22 in the best interests of the State; and that it is not in the best interest
23 of this State for it to place its funds at risk by providing its full faith
24 and credit to support a college savings program.

25 The purposes of this act are to establish a college savings program
26 and provide guidelines for the State in maintaining such program, all
27 with the following goals:

28 a. Encouraging individuals to save to help pay the costs of higher
29 education;

30 b. Helping make the benefits of higher education available to the
31 people of this State;

32 c. Promoting economic development of this State by creating
33 opportunities for a more highly educated workforce;

34 d. Enabling residents of the State to benefit from the tax incentives
35 provided for qualified state tuition programs under the federal Internal
36 Revenue Code; and

1 e. Attracting students to public and private colleges and
2 universities within the State.

3

4 3. As used in this act:

5 "Account" means an individual trust account or savings account
6 established in accordance with this act;

7 "Account owner" means the person designated at the time an
8 account is opened as having the right to withdraw funds from the
9 account before the account is disbursed to or for the benefit of the
10 designated beneficiary;

11 "Authority" means the New Jersey Higher Education Assistance
12 Authority;

13 "Designated beneficiary" means, except as provided in subsection
14 j. of section 6 of this act, with respect to an account the individual
15 designated at the time the account is opened as the individual whose
16 higher education expenses are expected to be paid from the account
17 or, if such designated beneficiary is replaced in accordance with
18 subsection c. of section 6 of this act, such replacement;

19 "Financial institution" means a bank, a commercial bank, a national
20 bank; a savings bank, a savings and loan, a thrift, a credit union, an
21 insurance company, a trust company, a mutual fund, or other similar
22 entity, and includes a state college savings trust;

23 "Higher education institution" means:

24 a. an institution described in section 1201 (a) or subparagraph (C)
25 or (D) of section 481 (a) (1) of the federal Higher Education Act of
26 1965, Pub.L.89-329 (as in effect on October 21, 1988); and

27 b. an area vocational education school (as defined in subparagraph
28 (C) or (D) of section 521 (3) of the federal Carl D. Perkins Vocational
29 Education Act, Pub.L.88-210 (20 U.S.C. §2471), as in effect on
30 October 21, 1988) located in the State;

31 "Member of family" means with respect to an individual:

32 a. an ancestor of the individual,

33 b. the spouse of the individual,

34 c. a lineal descendent of the individual, of the individual's spouse,
35 or of a parent of such individual,

36 d. the spouse of any lineal descendant described in subsection c. of
37 this definition; and

38 e. for purposes of this definition, a legally adopted child shall be
39 treated as a child by blood;

40 "Office" means the Office of Student Assistance;

41 "Nonqualified withdrawal" means a withdrawal from an account
42 other than:

43 a. a qualified withdrawal;

44 b. a withdrawal made as the result of the death or disability of the
45 designated beneficiary of an account;

1 c. a withdrawal made on the account of a scholarship (or allowance
2 or payment described in subparagraphs (B) or (C) of paragraph (1) of
3 subsection (d) of section 135 of the federal Internal Revenue Code of
4 1986, 26 U.S.C. §135, designated beneficiary, but only to the extent
5 of the amount of that scholarship, allowance, or payment; or

6 d. a rollover or change in designated beneficiary described in
7 subsection c. of section 6 of this act;

8 "Program" means the "New Jersey Family College Savings
9 Program" established under this act;

10 "Qualified higher education expenses" means tuition, fees, books
11 supplies and equipment required for enrollment or attendance of a
12 designated beneficiary at a higher education institution;

13 "Qualified withdrawal" means a withdrawal from an account to pay
14 the qualified higher education expenses of the designated beneficiary
15 of the account, but only if made in accordance with rules prescribed
16 under subsection b. of section 6 of this act;

17 "State college savings trust" means a trust established by the State
18 or a State agency if:

19 a. units in the trust are sold exclusively through the program for
20 college savings; and

21 b. The State or State agency manages (with or without the
22 assistance of professional investment advisers) the investments of the
23 trust.

24

25 4. a. There is established a "New Jersey Family College Savings
26 Program" in the Office of Student Assistance to be administered by
27 that office in accordance with the provisions of this act. The office
28 shall develop and maintain a program offering college savings
29 instruments to individuals who desire to plan ahead for college or
30 vocational education. The program shall be structured to permit the
31 long-term accumulation of savings that can be used to finance all or a
32 share of the costs of higher education.

33 b. In connection with the establishment and maintenance of the
34 program, the office shall have the following powers:

35 (1) To develop and implement the program in a manner consistent
36 with the provisions of this act through rules, guidelines, and
37 procedures established in accordance with the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)

39 (2) To retain professional services, if necessary, including
40 accountants and auditors; consultants and other experts; and attorneys;

41 (3) To employ persons and fix the terms of their employment;

42 (4) To seek rulings and other guidance from the United States
43 Department of Treasury and the federal Internal Revenue Service
44 relating to the program;

45 (5) To make changes to the program required for the participants
46 in the program to obtain the federal income tax benefits or treatments

1 provided by section 529 of the federal Internal Revenue Code of 1986,
2 26 U.S.C. §529, as amended, or any similar successor legislation;

3 (6) To interpret, in rules, policies, guidelines and procedures, the
4 provisions of this act broadly in light of its purposes and objectives;

5 (7) To charge, impose, and collect administrative fees and service
6 charges in connection with any agreement contract or transaction
7 relating to the program; and

8 (8) To select the financial institution or financial institutions to act
9 as the depository and manger of the program in accordance with
10 section 5 of this act.

11 c. The office shall not delegate to any person other than an
12 employee of the office, an employee of the State, or an agency of the
13 State any of its obligations, responsibilities, or powers:

14 (1) That are specifically enumerated under subsection b. of this
15 section other than the power to collect administrative fees; or

16 (2) To monitor the performance or conduct pursuant to subsection
17 d. of section 5 of this act (except that in the conduct of such activity
18 the office or the authority may seek or rely upon reports from
19 independent accounting or actuarial firms).

20

21 5. a. The office shall implement the program through use of a
22 financial institution as an account depository and manger. Under the
23 program, persons may establish accounts through the program at the
24 depository.

25 b. (1) The office shall solicit proposals from financial institutions
26 to act as the depository and manager of the program. Financial
27 institutions that submit proposals will be required to describe the
28 financial instrument which will be held in accounts. Proposals may be
29 made by the sponsor or manager of a State college savings trust, a
30 mutual fund, or other entity, rather than the financial institution itself.

31 (2) The office shall select as program depository and manger the
32 financial institution or financial institutions from among bidding
33 financial institutions that demonstrates the most advantageous
34 combination, both to potential program participants and this State, of
35 the following factors:

36 (a) financial stability and integrity of the financial institution;

37 (b) the safety of the investment instrument being offered (taking
38 into account any insurance provided with respect to such instrument);

39 (c) the ability of the investment instrument to track increasing costs
40 of higher education;

41 (d) the ability of the financial institution (directly or through
42 subcontract) to satisfy record keeping and reporting requirements;

43 (e) the financial institution's plan for promoting the program and the
44 investment it is willing to make to promote the program;

45 (f) the fees, if any, proposed to be charged to persons for opening
46 accounts;

1 (g) minimum initial deposit and minimum contributions that the
2 financial institution will require and the willingness of financial
3 institution to accept contributions through payroll deduction plans; and

4 (h) other benefits to the State or its residents in the proposal,
5 including fees payable to the State to cover expenses of operation of
6 the program.

7 (3) The office shall enter into a contract with a financial institution
8 or with financial institutions, to serve as program manager and
9 depository. Each financial institution participating in the program shall
10 provide only one type of investment instrument.

11 (4) The office may select more than one financial institution and
12 investment instrument for the program if:

13 (a) the federal Internal Revenue Service has provided guidance that
14 giving a contributor choice of more than one investment instrument
15 under a State tuition program will not cause the plan to fail to qualify
16 for favorable tax treatment under section 529 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. §529; and

18 (b) the office concludes that the choice of investment vehicles is in
19 the best interest of college savers and will not interfere with the
20 promotion of the program.

21 c. A program manager shall:

22 (1) Take all action required to keep the program in compliance
23 with requirements of section 6 of this act and all action not contrary
24 to this act or its contract to manage the program so that it is treated
25 as a "qualified State tuition program" under section 529 of the federal
26 Internal Revenue Code of 1986, 26 U.S.C. §529;

27 (2) Keep adequate records of each account, keep each account
28 segregated from each other account, and provide the office with the
29 information necessary to prepare statements required by subsection j.
30 of section 6 of this act or file such statements on behalf of the office;.

31 (3) Compile and total information contained in statements required
32 to be prepared under subsection i. of section 6 of this act and provide
33 such compilations to the office;

34 (4) If there is more than one program manager, provide the office
35 with such information to assist the authority to determine compliance
36 with subsection h. of section 6 of this act,

37 (5) Provide representatives of the office, including other
38 contractors or other State agencies, access to the books and records
39 of the program manager to the extent needed to determine compliance
40 with the contract; and

41 (6) To hold all accounts in trust for the benefit of the State and the
42 account owners.

43 d. (1) (a) The office may conduct an audit of the operations and
44 financial position of the program manager and depository at any time
45 if the office has any reason to be concerned about the financial
46 position of the program manger and depository, the record keeping

1 practices of the program manager and depository, or the status of
2 accounts.

3 (b) (i.) The office shall require that the program manager and
4 depository be audited at least annually by a firm of certified public
5 accountants selected by the program manager and that the results of
6 such audit be provided to the office.

7 (ii) The program manager shall be required to provide the office
8 with copies of all regulatory filings and reports made by it during the
9 term of the contract or while it is holding any accounts, other than
10 confidential filings or reports that will not become part of the public
11 record. The program manager shall make available for review by the
12 office the results of any periodic examination of the manager by any
13 state or federal banking, insurance, or securities commission, except
14 to the extent that such reports may not be disclosed under applicable
15 law or the rules of such commission.

16 (iii) At least once during the term of any contract with a program
17 manager, the office or an appropriate State agency in consultation with
18 the office shall conduct an examination of the manager and its handling
19 of accounts. Such examination shall be conducted at least biannually
20 if the manager is not subject to periodic examination by a State
21 agency, the Federal Deposit Insurance Corporation or other similar
22 entity.

23 (2) No person shall circulate any description of the Program,
24 whether in writing or through the use of any media, unless such
25 description is first approved by the authority or its designee.

26 e. (1) Any contract described in subsection b. of this section shall
27 be for a term of at least three years and not more than seven years.

28 (2) If a contract described in subsection b. of this section is not
29 renewed, after the end of its term:

30 (a) Accounts previously established and held in investment
31 instruments at such financial institution shall not be terminated;

32 (b) Additional contributions may be made to such accounts; and

33 (c) No new accounts may be placed with such financial institution.

34 (3) The office may terminate a contract with a financial institution
35 at any time for good cause. In such case, the office shall take custody
36 of accounts held at such financial institution and shall seek to promptly
37 transfer the accounts to another financial institution that is selected as
38 a program manager and into investment instruments as similar to the
39 original instruments as possible.

40 f. The office may enter into such other contracts as it deems
41 necessary and proper for the implementation of the program.

42

43 6. a. (1) The program shall be operated through use of accounts.

44 (2) An account may be opened by any person who desires to save
45 to pay the qualified higher education expenses of an individual by:

- 1 (a) completing an application in the form prescribed by the office,
2 which application shall require:
- 3 (i.) the name, address and social security number or employer
4 identification number of the contributor;
- 5 (ii) the name, address and social security number of the account
6 owner if different from the contributor;
- 7 (iii) the designation of a designated beneficiary;
- 8 (iv) the name, address, and social security number of the
9 designated beneficiary;
- 10 (v) the certification relating to no excess contributions required by
11 subsection h. of this section; and
- 12 (vi) such other information as the authority may require;
- 13 (b) paying the application fee, if any, established by the authority;
- 14 (c) making the minimum contribution required by the authority or
15 opening an account; and
- 16 (d) designating the type of account to be opened if more than one
17 type of account is offered.
- 18 (3) Any person may make contributions to an account once the
19 account is opened.
- 20 (4) Contributions to an account may be made only in cash.
- 21 b. Account owners may withdraw all or part of the balance from an
22 account on 60 days notice, or such shorter period as the office may
23 prescribe, under rules prescribed by the office. Such rules shall
24 include provisions that will generally enable the office or program
25 manager to determine if a withdrawal is a nonqualified withdrawal or
26 a qualified withdrawal. The rules may, but need not, require one or
27 more of the following:
- 28 (1) account owners seeking to make a qualified withdrawal or
29 other withdrawal that is not a nonqualified withdrawal provide
30 certifications, copies of bills for qualified higher education expenses or
31 other supporting material;
- 32 (2) qualified withdrawals from an account be made only by check
33 payable jointly to the designated beneficiary and a higher education
34 institution; and
- 35 (3) withdrawals not meeting certain requirements be treated as
36 nonqualified withdrawals by the program manager and that if such
37 withdrawals are not nonqualified withdrawals, the account owner must
38 seek refunds of penalties directly from the office.
- 39 c. (1) An account owner may change the designated beneficiary of
40 an account to an individual who is a member of the family of the old
41 designated beneficiary in accordance with procedures established by
42 the authority.
- 43 (2) Upon the direction of an account owner, all or a portion of an
44 account may be transferred to another account of which the designated
45 beneficiary is a member of the family of the designated beneficiary of
46 the transferee account.

1 (3) Changes in designated beneficiaries and rollovers under this
2 subsection shall not be permitted to extent that they would violate:

3 (a) subsection h. of this section, relating to excess contributions,
4 or

5 (b) subsection f. of this section, relating to investment direction.

6 d. (1) In the case of any nonqualified withdrawal from an account,
7 an amount equal to 5 percent of the portion of the proposed
8 withdrawal that would constitute income as determined in accordance
9 with the principles of section 529 of the federal Internal Revenue Code
10 of 1986, 26 U.S.C. §529, shall be withheld as a penalty and paid to the
11 office.

12 (2) (a) The office shall prescribe an increase in the percentage of
13 the penalty described in paragraph (1) of this subsection or change the
14 base on which such penalty is based if the office determines that the
15 amount of the penalty must be increased to constitute a more than "de
16 minimis" penalty for purposes of qualifying the program as a "qualified
17 State tuition program" under section 529 of the federal Internal
18 Revenue Code of 1986, 26 U.S.C. §529.

19 (b) The office may in its sole discretion decrease the percentage of
20 the penalty described in paragraph (1) of this subsection if it
21 determines that the penalty is greater than is required to constitute a
22 more than "de minimis" penalty for purposes of qualifying the program
23 as a "qualified State tuition program" under section 529 of the federal
24 Internal Revenue Code of 1986, 26 U.S.C. §529.

25 (3) If an account owner makes a nonqualified withdrawal and no
26 penalty amount is withheld pursuant to paragraph (1) of this
27 subsection or the amount withheld was less than the amount required
28 to be withheld under that paragraph for nonqualified withdrawals, the
29 account owner shall pay the unpaid portion of the penalty to the State
30 Treasurer at the same time that the account owner files a gross income
31 tax return for the taxable year of the withdrawal (or if the account
32 owner does not file a return, the due date for a gross income tax
33 return) but in any event on or before the due date for that return
34 (taking into account authorized extensions).

35 e. (1) Each account shall be maintained separately from each other
36 account under the program.

37 (2) Separate records and accounting shall be maintained for each
38 account for each designated beneficiary.

39 f. (1) No contributor to, account owner, or designated beneficiary
40 of any account shall be permitted to direct the investment of any
41 contributions to an account or the earnings thereon.

42 (2) If the office terminates the authority of a financial institution
43 to hold accounts and accounts must be moved from that financial
44 institution to another financial institution, the office shall select the
45 financial institution and type of investment to which the balance of the
46 account is moved unless the federal Internal Revenue Service provides

1 guidance stating that in such conditions allowing the account owner to
2 select among several financial institutions that are then contractors
3 would not cause a plan to cease to be a "qualified State tuition
4 program" for the purposes of section 529 of the federal Internal
5 Revenue Code, 26 U.S.C. § 529.

6 g. An account owner or a designated beneficiary shall not use an
7 interest in an account as security for a loan. Any pledge of an interest
8 in an account shall be of no force and effect.

9 h. (1) The office shall adopt regulations to prevent contributions on
10 behalf of a designated beneficiary in excess of those necessary to pay
11 the qualified higher education expenses of the designated beneficiaries.

12 (2) The rules or regulations adopted under paragraph (1) shall
13 include:

14 (a) procedures for aggregating the total balances of multiple
15 accounts established for a designated beneficiary;

16 (b) establishment of a maximum total balance that may be held in
17 accounts for a designated beneficiary;

18 (c) requirements that persons who contribute to an account certify
19 that to the best of their knowledge that the balance in all "qualified
20 State tuition programs" as defined in section 529 of the Internal
21 Revenue Code of 1986, 26 U.S.C. §529, of which the designated
22 beneficiary is the designated beneficiary does not exceed the lesser of:

23 (i.) a maximum college savings amount established by the authority
24 from time to time, or

25 (ii) the cost in current dollars of qualified higher education
26 expenses that the contributor reasonably anticipates the designated
27 beneficiary will incur; and

28 (d) requirements that any excess balances with respect to a
29 designated beneficiary be promptly withdrawn in a nonqualified
30 withdrawal or rolled over to another account in accordance with
31 subsection c. of this section.

32 i.. (1) If there is any distribution from an account to any individual
33 or for the benefit of any individual during a calendar year, such
34 distribution shall be reported to the federal Internal Revenue Service
35 and to the account owner or designated beneficiary to the extent
36 required by federal law or regulation.

37 (2) Statements shall be provided to each account owner at least
38 once each year within 31 days of the 12-month period to which they
39 relate. The statement shall identify the contributions made during a
40 preceding 12-month period, the total contributions made through the
41 end of the period, the value of the account as of the end of the period,
42 distributions made during the period and any other matters that the
43 office shall prescribe be reported to the account owner.

44 (3) Statements and information returns relating to accounts shall
45 be prepared and filed to the extent required by federal or State law.

46 j. (1) A State or local government or an organization described in

1 paragraph (3) of subsection (c) of section 501 of the federal Internal
2 Revenue Code of 1986, 26 U.S.C. §501, may open and become the
3 account owner of an account to fund scholarships for persons whose
4 identity will be determined after an account is opened.

5 (2) In the case of any account described in paragraph (1) of this
6 subsection:

7 (a) the requirement that a designated beneficiary be designated
8 when an account is opened shall not apply; and

9 (b) each individual who receives an interest in such account as a
10 scholarship shall be treated as a designated beneficiary with respect to
11 such interest.

12
13 7. a. Any student loan program, student grant program, or other
14 financial assistance program established or administered by the State
15 shall treat the balance in an account of which the student is a
16 designated beneficiary as if it were an asset of the parent of the
17 designated beneficiary and not as a scholarship or grant or as an asset
18 of the student for purposes of determining a student or parent's
19 income, assets or financial need.

20 b. Subsection a. of this section shall apply to any financial
21 assistance program administered by a State supported college or
22 university.

23 c. Subsections a. and b. of this section shall not apply to the extent
24 that:

25 (1) federal law requires all or a portion of the amount in an account
26 to be taken into account in a different manner,

27 (2) federal benefits could be lost if all or a portion of the amount
28 in an account is not taken into account in a different manner, or

29 (3) a specific grant establishing a financial assistance program
30 requires that all or a portion of the amount in an account be taken into
31 account.

32
33 8. a. Nothing in this act shall:

34 (1) give any designated beneficiary any rights or legal interest with
35 respect to account unless the designated beneficiary is the account
36 owner;

37 (2) guarantee that a designated beneficiary will be admitted to a
38 higher education institution;

39 (3) create State residency for an individual merely because the
40 individual is a designated beneficiary; or

41 (4) guarantee that amounts saved pursuant to the program will be
42 sufficient to cover the qualified higher education expenses of a
43 designated beneficiary.

44 b. (1) Nothing in this act shall create or be construed to create any
45 obligation of the office, the authority, the State, or any agency or
46 instrumentality of the State to guarantee for the benefit of any account

1 owner, contributor to an account, or designated beneficiary:

2 (a) the return of any amounts contributed to an account;

3 (b) the rate of interest or other return on any account; or

4 (c) the payment of interest or other return on any account.

5 (2) Under regulations to be adopted by the office, every contract,
6 application, deposit slip, or other similar document that may be used
7 in connection with a contribution to an account shall clearly indicate
8 that the account is not insured by the State and neither the principal
9 deposited nor the investment return is guaranteed by the State.

10

11 9. a. Gross income of a designated beneficiary of the "New Jersey
12 Family College Savings Program" established pursuant to P.L. ,

13 c. (C.)(now pending before the Legislature as this bill), or a
14 contributor to that program, shall not include the earnings of amounts
15 invested in that program, except as provided by subsection b. of this
16 section.

17 b. Gross income of a designated beneficiary of the "New Jersey
18 Family College Savings Program," or a contributor to that program,
19 shall include distributions or deemed distributions from that program
20 to the extent that amounts are included in their federal gross income
21 pursuant to section 529 of the federal Internal Revenue Code of 1986,
22 26 U.S.C. §529.

23

24 10. This act shall take effect immediately.

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STATEMENT

28

29 This bill establishes the "New Jersey Family College Savings
30 Program" in the New Jersey Office of Student Assistance. The
31 program will provide a vehicle for savings for future payment of higher
32 education costs.

33 The bill authorizes a program in the Office of Student Assistance
34 that allows people to make contributions to an account that is
35 established for the purpose of meeting the qualified higher education
36 expenses of a designated person. The office is responsible for
37 selecting financial institutions that will provide investments and
38 market the program to New Jersey families.

39 The program is designed so that it will qualify as a "qualified State
40 tuition program" under the federal Internal Revenue Code. No amount
41 of investment earnings will be included in the federal taxable income
42 of a contributor to, or beneficiary of, the program with respect to any
43 contribution to, or earnings under, the program. When amounts are
44 distributed from the program for qualified educational expenses, the
45 amount of earnings will be included in the beneficiary's taxable income.
46 The beneficiary (a college student) will probably be taxed at a lower

1 rate than the contributor (in many cases, the student's parents) so less
2 total taxes will be due.

3 The bill also provides a treatment equivalent to the federal
4 treatment under the New Jersey gross income tax, to provide a further
5 incentive for college savings. The administrative costs incurred by the
6 Office of Student Assistance are paid in part by small application fees
7 and fees on non-qualified withdrawals.

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12 "New Jersey College Savings Plan Act;" provides gross income tax
13 incentives for certain college savings.