

[Passed Both Houses]

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2012

STATE OF NEW JERSEY

ADOPTED JUNE 12, 1997

**Sponsored by Senators KYRILLOS, DiFRANCESCO, Kosco,
Bubba, Sinagra, Matheussen, Scott, MacInnes, Inverso,
Assemblymen O'Toole, Rocco, Assemblywoman Crecco,
Assemblymen Jones and Weingarten**

1 **AN ACT** establishing a college savings program and supplementing
2 Titles 18A and 54A of the New Jersey Statutes.

3

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

6

7 1. Sections 1 through 12 of this act establish a college savings
8 plan and shall be known and may be cited as the "New Jersey Better
9 Educational Savings Trust (NJBEST) Act."

10

11 2. The Legislature finds and declares that:

12 a. This State is committed to making world-class education
13 accessible and affordable for all New Jersey students;

14 b. When families save for college education, they are making an
15 important investment in the future for themselves and the young
16 people of this State;

17 c. Incentives are needed to encourage families to save for college
18 education;

19 d. The "Small Business Job Protection Act of 1996," Pub.L.104-
20 188, amended the federal Internal Revenue Code to provide for
21 favorable tax treatment for qualified college savings programs and

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and intended to be omitted in the law.**

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 16, 1997.

² Senate floor amendments adopted June 19, 1997.

1 participants in the programs; and

2 e. In addition to favorable federal tax treatment for a college
3 savings program and its participants, it is desirable to provide
4 favorable State tax treatment, as a special incentive for student
5 beneficiaries to attend college in this State.

6

7 3. As used in this act:

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

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

12 "Contributor" means the person or organization contributing to and
13 maintaining an account and having the right to withdraw funds from
14 the account before the account is disbursed to or for the benefit of the
15 designated beneficiary;

16 "Designated beneficiary" means: a. the individual designated at the
17 time the account is opened as the individual whose higher education
18 expenses are expected to be paid from the account; b. the replacement
19 beneficiary if the change in designated beneficiary would not result in
20 a distribution that is included in federal gross income under section
21 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529; and
22 c. in the case of an interest in the program purchased by a state or
23 local government or an organization described in paragraph (3) of
24 subsection (c) of section 501 of the federal Internal Revenue Code of
25 1986, 26 U.S.C. §501 and exempt from taxation under subsection (a)
26 of section 501 of the federal Internal Revenue Code of 1986, 26
27 U.S.C. §501, as a part of a scholarship program operated by the
28 government or organization, the individual receiving the interest as a
29 scholarship;

30 "Higher education institution" means an eligible educational
31 institution as defined in or for purposes of section 529 of the federal
32 Internal Revenue Code of 1986, 26 U.S.C. §529. Higher education
33 institution shall include a proprietary institution if expenses for tuition
34 at the institution would be considered qualified higher education
35 expenses under section 529 of the federal Internal Revenue Code of
36 1986, 26 U.S.C. §529, but only for degree granting programs licensed
37 or approved by the Commission on Higher Education or for other
38 proprietary institutions as determined by the authority;

39 "Investment Manager" means the Division of Investment in the
40 Department of the Treasury or the private entities authorized to do
41 business in this State that may be designated by the authority to invest
42 the funds of the trust pursuant to the terms of this act;

43 "Member of the family" means a member of the family as defined
44 in or for purposes of section 529 of the federal Internal Revenue Code
45 of 1986, 26 U.S.C. §529;

1 "Nonqualified withdrawal" means a withdrawal from an account
2 other than: a. a qualified withdrawal; b. a withdrawal made as the
3 result of the death or disability of the designated beneficiary of an
4 account; c. a withdrawal made on account of a scholarship (or
5 allowance or payment described in subparagraphs (B) or (C) of
6 paragraph (1) of subsection (d) of section 135 of the federal Internal
7 Revenue Code of 1986, 26 U.S.C. §135) received by the designated
8 beneficiary, but only to the extent of the amount of that scholarship,
9 allowance or payment; d. a rollover or change in designated
10 beneficiary which would not result in a distribution includible in
11 federal gross income under section 529 of the federal Internal
12 Revenue Code of 1986, 26 U.S.C. §529; or e. any other withdrawal if
13 the failure of the program to impose a more than de minimis penalty
14 on the withdrawal would cause the program not to be a qualified State
15 tuition program under section 529 of the federal Internal Revenue
16 Code of 1986, 26 U.S.C. §529;

17 "Program" means the "New Jersey Better Educational Savings
18 Trust (NJBEST) Program" established pursuant to this act;

19 "Qualified higher education expenses" means expenses described
20 in paragraph (3) of subsection (e) of section 529 of the federal Internal
21 Revenue Code of 1986, 26 U.S.C. §529 incurred in connection with the
22 enrollment of a designated beneficiary at a higher education institution;

23 "Qualified withdrawal" means a withdrawal from an account to pay
24 the qualified higher education expenses of the designated beneficiary
25 of the account; but a withdrawal shall not be considered a qualified
26 withdrawal if the failure of the program to impose a more than de
27 minimis penalty on the withdrawal would cause the program not to
28 qualify as a qualified State tuition program under section 529 of the
29 federal Internal Revenue Code of 1986, U.S.C. §529;

30 "Trust" means the "New Jersey Better Educational Savings Trust"
31 established pursuant to section 4 of this act.

32

33 4. There is created within the New Jersey Higher Education
34 Assistance Authority the New Jersey Better Educational Savings
35 (NJBEST) Trust. The trust shall provide a mechanism through which
36 the authority, as trustee, holds accounts established and maintained
37 pursuant to the provisions of this act to finance the cost of qualified
38 higher education expenses.

39

40 5. The Office of Student Assistance shall administer the NJBEST
41 Program established in the authority. The authority shall have the
42 power to:

43 a. serve as trustee of the trust;

44 b. adopt rules and regulations pursuant to the "Administrative
45 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to

1 carry out the provisions of this act;

2 c. prescribe and provide appropriate forms for participation in the
3 program;

4 d. select an investment manager and any other contractors needed
5 to manage and market the program;

6 e. monitor the investment manager and any other contractors by
7 audits and other reports;

8 f. collect reasonable administrative fees in connection with any
9 contract or transaction relating to the program;

10 g. impose penalties for nonqualified withdrawals;

11 h. take all actions required so that the program is treated as a
12 qualified State tuition program under section 529 of the federal
13 Internal Revenue Code of 1986, 26 U.S.C. §529; and

14 i. perform any other acts which may be deemed necessary or
15 appropriate to carry out the objects and purposes of this act.

16

17 6. Neither the members of the authority, nor any officer or
18 employee of the authority shall be liable personally for the debts,
19 liabilities or obligations of the program established pursuant to this
20 act.

21

22 7. a. The authority shall select an investment manager or
23 managers to invest the funds of the trust or the funds in accounts. In
24 making this selection, ¹any investment manager shall be subject to the
"prudent person" standard of care applicable to the Division of
Investment in the Department of the Treasury pursuant to subsection
b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and¹ the authority
28 shall ¹[promote an investment policy, the objectives of which include
29 minimization of risk, liquidity, and maximization of yield] consider the
30 impact of fees and costs imposed by the manager or managers on yield
to contributors¹.

32 b. The authority may select more than one investment manager
33 and investment instrument for the program if it is in the best interest
34 of contributors and will not interfere with the administration of the
35 program.

36 c. The authority may provide a contributor with a choice of
37 investment managers or investment instruments or both for the
38 program if both of the following conditions exist:

39 (1) the federal Internal Revenue Service has provided guidance
40 that providing a contributor with a choice of investment managers or
41 instruments under a State tuition program will not cause the program
42 to fail to qualify for favorable tax treatment under section 529 of the
43 federal Internal Revenue Code of 1986, 26 U.S.C. §529; and

44 (2) the authority concludes that a choice of ¹investment managers
45 or of¹ investment instruments is in the best interest of contributors

1 and will not interfere with the administration of the program.

2 d. If the authority terminates the designation of an investment
3 manager to hold accounts, and accounts must be moved from that
4 investment manager to another investment manager, the authority shall
5 select the investment manager and type of investment instrument to
6 which the balance of the account is moved, unless the federal Internal
7 Revenue Service provides guidance that allowing the contributor to
8 select among several investment managers or investment instruments
9 that have been selected by the authority would not cause a program to
10 cease to be a qualified State tuition program for the purposes of
11 section 529 of the federal Internal Revenue Code, 26 U.S.C. §529.

12

13 8. a. The program shall be operated as a trust through the use of
14 accounts for designated beneficiaries. An account may be opened by
15 any person who desires to save to pay the qualified higher education
16 expenses of an individual by satisfying each of the following
17 requirements:

18 (1) completing an application in the form prescribed by the
19 authority;

20 (2) paying the one-time application fee established by the
21 authority;

22 (3) making the minimum contribution required by the authority for
23 opening an account;

24 (4) designating the account or accounts to be opened; and

25 (5) in the case of an account to which subsection a. of section 11
26 of this act would apply, demonstrating to the satisfaction of the
27 authority that either the contributor, if an individual, or the designated
28 beneficiary is a New Jersey resident. The requirement of New Jersey
29 residency for either the contributor or the designated beneficiary
30 would not apply to an account to which subsection b. of section 11 of
31 this act would apply unless otherwise determined by the authority;

32 b. Except as provided under section 9 of this act, only the
33 contributor may make contributions to an account after the account is
34 opened.

35 c. Contributions to accounts shall be made only in cash, as defined
36 by the authority pursuant to regulations, in accordance with section
37 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529.

38 d. Contributors may withdraw all or part of the balance from an
39 account on sixty days' notice or a shorter period, as may be authorized
40 by the authority pursuant to regulations.

41 e. A contributor may change the designated beneficiary of an
42 account or rollover all or a portion of an account to another account
43 if the change or rollover would not result in a distribution includable
44 in gross income under section 529 of the federal Internal Revenue
45 Code of 1986, 26 U.S.C. §529, in accordance with procedures

1 established by the authority.

2 f. In the case of any nonqualified withdrawal, a penalty at a level
3 established by the authority and sufficient to be considered a more than
4 de minimis penalty for purposes of section 529 of the federal Internal
5 Revenue Code of 1986, 26 U.S.C. §529, shall be withheld and paid to
6 the authority for use in operating and marketing the program. The
7 authority may elect not to impose a penalty if that section ceases to
8 include a provision requiring more than de minimis penalties for a
9 program to qualify as a qualified State tuition program.

10 g. If a contributor makes a nonqualified withdrawal and a penalty
11 amount is not withheld pursuant to subsection f. of this section or the
12 amount withheld is less than the amount required to be withheld under
13 that subsection, the contributor shall pay the unpaid portion of the
14 penalty to the authority at the same time that the contributor files a
15 State income tax return for the taxable year of the withdrawal, or if the
16 contributor does not file a return, the unpaid portion of the penalty
17 shall be paid on or before the due date for the filing of that income tax
18 return.

19 h. Each account shall be maintained separately from each other
20 account under the program.

21 i. Separate records and accounting shall be maintained for each
22 account for each designated beneficiary.

23 j. A contributor to or designated beneficiary of any account shall
24 not direct the investment of any contributions to an account or the
25 earnings from the account, except as permitted under section 529 of
26 the federal Internal Revenue Code of 1986, 26 U.S.C. §529.

27 k. A contributor or a designated beneficiary shall not use an
28 interest in an account as security for a loan. Any pledge of an interest
29 in an account is of no force and effect.

30 l. The maximum contribution for any designated beneficiary shall
31 be determined by the authority pursuant to regulations, in accordance
32 with section 529 of the federal Internal Revenue Code of 1986, 26
33 U.S.C. §529.

34 m. Statements, reports on distributions and information returns
35 relating to accounts shall be prepared, distributed, and filed to the
36 extent required by section 529 of the federal Internal Revenue Code
37 of 1986, 26 U.S.C. §529, or regulations issued thereunder.

38 n. The authority may charge, impose and collect reasonable
39 administrative fees and service charges in connection with any
40 agreement, contract or transaction relating to the program. These fees
41 and charges may be imposed directly on contributors or may be taken
42 as a percentage of the investment earnings on accounts.

43

44 9. a. An amount of no less than \$500 shall be provided by the
45 State for the qualified higher education expenses of a designated

1 beneficiary at the time of a qualified withdrawal provided that:

2 (1) the contributor demonstrates, to the satisfaction of the
3 authority, that the contributor participated in the program for at least
4 four years by making a qualifying minimum initial deposit or qualifying
5 minimum annual contributions, or both, as shall be determined by the
6 authority, for a designated beneficiary;

7 (2) the designated beneficiary demonstrates, to the satisfaction of the
8 authority, attendance or enrollment in a higher education
9 institution in this State, at the time of initial attendance or enrollment
10 in the higher education institution; and

11 (3) either the contributor, if an individual, or the designated
12 beneficiary demonstrates, to the satisfaction of the authority, that the
13 contributor or designated beneficiary is a New Jersey resident.

14 b. The amount provided under subsection a. of this section shall
15 meet the requirements of a qualified scholarship within the meaning of
16 section 117 of the federal Internal Revenue Code of 1986, 26
17 U.S.C. §117, for a designated beneficiary satisfying the requirements
18 of subsection a. of this section.

19 c. A designated beneficiary shall not receive more than one State
20 scholarship provided pursuant to subsection a. of this section.

21

22 10. Annually, the authority shall determine a dollar amount of an
23 account, which shall not be less than \$25,000, which shall not be
24 considered in evaluating the financial needs of a student enrolled in an
25 institution of higher education located in the State of New Jersey, or
26 be deemed a financial resource or a form of financial aid or assistance
27 to a student, for purposes of determining the eligibility of a student for
28 any scholarship, grant, or monetary assistance awarded by the State;
29 nor shall the amount of any account as determined by the authority
30 provided for a designated beneficiary under this act reduce the amount
31 of any scholarship grant or monetary assistance which the student is
32 entitled to be awarded by the State.

33

34 11. a. If the investment manager is the Division of Investment in
35 the Department of the Treasury, in order to assure the availability of
36 principal of any amount contributed under this act, there shall be paid
37 to the authority for deposit in the trust, at the time of distribution,
38 subject to appropriation, such sum, if any, as shall be certified by the
39 chairman of the authority as necessary to provide that amount at the
40 time of distribution. The chairman shall make and deliver to the
41 Governor, or his designee, the certificate stating the sums, if any,
42 required to make available in the trust the amount aforesaid, and the
43 sums so certified shall be appropriated and paid to the authority during
44 the then current State fiscal year.

45 b. If the investment manager is a private entity, the investment of

1 the principal ²and interest² of any amount contributed under this act
2 shall be ²backed by the full faith and credit of the United States or be²
3 ¹fully¹ insured by the Federal Deposit Insurance Corporation or other
4 similar insurer backed by the full faith and credit of the United States
5 ¹[up to the maximum amount of insurance normally provided by the
6 insurer]. No account balance shall exceed ²[\$100,000] the maximum
7 amount of insurance provided by the insurer². No investment is
8 permitted in derivatives of eligible securities, and any investment must
9 be designed to balance prospective payments according to the
10 guidelines established¹.

11

12. a. Nothing in this act shall be construed to:

13 (1) guarantee that a designated beneficiary will be admitted to a
14 higher education institution or be allowed to continue enrollment at or
15 graduate from a higher education institution after admission;

16 (2) establish State residency for a person merely because the
17 person is a designated beneficiary; or

18 (3) guarantee that amounts saved pursuant to the program will be
19 sufficient to cover the qualified higher education expenses of a
20 designated beneficiary.

21 b. Nothing in this act establishes any obligation of this State or
22 any agency or instrumentality of this State to guarantee for the benefit
23 of any contributor or designated beneficiary any of the following:

24 (1) the rate of interest or other return on any account; or

25 (2) the payment of interest or other return on any account.

26 c. Nothing in this act establishes any obligation or liability of this
27 State or any agency or instrumentality of this State with respect to any
28 federal or State tax liability of any contributor or designated
29 beneficiary in this program.

30 d. Under regulations promulgated by the authority, every contract
31 and application that may be used in connection with a contribution to
32 an account shall clearly indicate that the account is not insured by this
33 State nor is the investment return guaranteed by this State.

34

35 13. a. Gross income shall not include the earnings on or
36 distribution from an individual trust account or savings account
37 established pursuant to the "New Jersey Better Educational Savings
38 Trust Program" established pursuant to P.L. , c. (C.)(now
39 pending before the Legislature as this bill).

40 b. "Distribution" means a withdrawal which pays the designated
41 beneficiary's qualified higher education expenses described in section
42 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529 or
43 which represents contributions net of earnings thereon.

44

45 14. If the Congress of the United States enacts legislation that

1 exempts educational savings accounts from federal income taxation,
2 sections 9 and 10 of this act shall apply with respect to such
3 educational savings accounts as if they were accounts established
4 under this act and the beneficiaries of the accounts were designated
5 beneficiaries subject to the approval of the New Jersey Higher
6 Education Assistance Authority.

7

8 15. This act shall take effect immediately.

9

10

11

12

13 "New Jersey Better Educational Savings Trust (NJBEST) Act."
