

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 and MacInnes

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
22 participants in the programs; and

23 e. In addition to favorable federal tax treatment for a college
24 savings program and its participants, it is desirable to provide
25 favorable State tax treatment, as a special incentive for student
26 beneficiaries to attend college in this State.

27
28 3. As used in this act:
29 "Account" means an individual trust account or savings account
30 established in accordance with this act;

31 "Authority" means the New Jersey Higher Education Assistance
32 Authority;

33 "Contributor" means the person or organization contributing to and
34 maintaining an account and having the right to withdraw funds from

1 the account before the account is disbursed to or for the benefit of the
2 designated beneficiary;

3 "Designated beneficiary" means: a. the individual designated at the
4 time the account is opened as the individual whose higher education
5 expenses are expected to be paid from the account; b. the replacement
6 beneficiary if the change in designated beneficiary would not result in
7 a distribution that is included in federal gross income under section
8 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529; and
9 c. in the case of an interest in the program purchased by a state or
10 local government or an organization described in paragraph (3) of
11 subsection (c) of section 501 of the federal Internal Revenue Code of
12 1986, 26 U.S.C. §501 and exempt from taxation under subsection (a)
13 of section 501 of the federal Internal Revenue Code of 1986, 26
14 U.S.C. §501, as a part of a scholarship program operated by the
15 government or organization, the individual receiving the interest as a
16 scholarship;

17 "Higher education institution" means an eligible educational
18 institution as defined in or for purposes of section 529 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C. §529. Higher education
20 institution shall include a proprietary institution if expenses for tuition
21 at the institution would be considered qualified higher education
22 expenses under section 529 of the federal Internal Revenue Code of
23 1986, 26 U.S.C. §529, but only for degree granting programs licensed
24 or approved by the Commission on Higher Education or for other
25 proprietary institutions as determined by the authority;

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

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

33 "Nonqualified withdrawal" means a withdrawal from an account
34 other than: a. a qualified withdrawal; b. a withdrawal made as the
35 result of the death or disability of the designated beneficiary of an
36 account; c. a withdrawal made on account of a scholarship (or
37 allowance or payment described in subparagraphs (B) or (C) of
38 paragraph (1) of subsection (d) of section 135 of the federal Internal
39 Revenue Code of 1986, 26 U.S.C. §135) received by the designated
40 beneficiary, but only to the extent of the amount of that scholarship,
41 allowance or payment; d. a rollover or change in designated
42 beneficiary which would not result in a distribution includible in
43 federal gross income under section 529 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. §529; or e. any other withdrawal if
45 the failure of the program to impose a more than de minimis penalty

1 on the withdrawal would cause the program not to be a qualified State
2 tuition program under section 529 of the federal Internal Revenue
3 Code of 1986, 26 U.S.C.§529;

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

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

10 "Qualified withdrawal" means a withdrawal from an account to pay
11 the qualified higher education expenses of the designated beneficiary
12 of the account; but a withdrawal shall not be considered a qualified
13 withdrawal if the failure of the program to impose a more than de
14 minimis penalty on the withdrawal would cause the program not to
15 qualify as a qualified State tuition program under section 529 of the
16 federal Internal Revenue Code of 1986, U.S.C.§529;

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

19

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

26

27 5. The Office of Student Assistance shall administer the NJBEST
28 Program established in the authority. The authority shall have the
29 power to:

30 a. serve as trustee of the trust;

31 b. adopt rules and regulations pursuant to the "Administrative
32 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
33 carry out the provisions of this act;

34 c. prescribe and provide appropriate forms for participation in the
35 program;

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

38 e. monitor the investment manager and any other contractors by
39 audits and other reports;

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

42 g. impose penalties for nonqualified withdrawals;

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

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

3
4 6. Neither the members of the authority, nor any officer or
5 employee of the authority shall be liable personally for the debts,
6 liabilities or obligations of the program established pursuant to this
7 act.

8
9 7. a. The authority shall select an investment manager or
10 managers to invest the funds of the trust or the funds in accounts. In
11 making this selection, the authority shall promote an investment
12 policy, the objectives of which include minimization of risk, liquidity,
13 and maximization of yield.

14 b. The authority may select more than one investment manager
15 and investment instrument for the program if it is in the best interest
16 of contributors and will not interfere with the administration of the
17 program.

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

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

26 (2) the authority concludes that a choice of investment instruments
27 is in the best interest of contributors and will not interfere with the
28 administration of the program.

29 d. If the authority terminates the designation of an investment
30 manager to hold accounts, and accounts must be moved from that
31 investment manager to another investment manager, the authority shall
32 select the investment manager and type of investment instrument to
33 which the balance of the account is moved, unless the federal Internal
34 Revenue Service provides guidance that allowing the contributor to
35 select among several investment managers or investment instruments
36 that have been selected by the authority would not cause a program to
37 cease to be a qualified State tuition program for the purposes of
38 section 529 of the federal Internal Revenue Code, 26 U.S.C.§529.

39
40 8. a. The program shall be operated as a trust through the use of
41 accounts for designated beneficiaries. An account may be opened by
42 any person who desires to save to pay the qualified higher education
43 expenses of an individual by satisfying each of the following
44 requirements:

45 (1) completing an application in the form prescribed by the

1 authority;

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

4 (3) making the minimum contribution required by the authority for
5 opening an account;

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

7 (5) in the case of an account to which subsection a. of section 11
8 of this act would apply, demonstrating to the satisfaction of the
9 authority that either the contributor, if an individual, or the designated
10 beneficiary is a New Jersey resident. The requirement of New Jersey
11 residency for either the contributor or the designated beneficiary
12 would not apply to an account to which subsection b. of section 11 of
13 this act would apply unless otherwise determined by the authority;

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

17 c. Contributions to accounts shall be made only in cash, as defined
18 by the authority pursuant to regulations, in accordance with section
19 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.§529.

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

23 e. A contributor may change the designated beneficiary of an
24 account or rollover all or a portion of an account to another account
25 if the change or rollover would not result in a distribution includible
26 in gross income under section 529 of the federal Internal Revenue
27 Code of 1986, 26 U.S.C.§529, in accordance with procedures
28 established by the authority.

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

37 g. If a contributor makes a nonqualified withdrawal and a penalty
38 amount is not withheld pursuant to subsection f. of this section or the
39 amount withheld is less than the amount required to be withheld under
40 that subsection, the contributor shall pay the unpaid portion of the
41 penalty to the authority at the same time that the contributor files a
42 State income tax return for the taxable year of the withdrawal, or if the
43 contributor does not file a return, the unpaid portion of the penalty
44 shall be paid on or before the due date for the filing of that income tax
45 return.

- 1 h. Each account shall be maintained separately from each other
2 account under the program.
- 3 i. Separate records and accounting shall be maintained for each
4 account for each designated beneficiary.
- 5 j. A contributor to or designated beneficiary of any account shall
6 not direct the investment of any contributions to an account or the
7 earnings from the account, except as permitted under section 529 of
8 the federal Internal Revenue Code of 1986, 26 U.S.C.§529.
- 9 k. A contributor or a designated beneficiary shall not use an
10 interest in an account as security for a loan. Any pledge of an interest
11 in an account is of no force and effect.
- 12 l. The maximum contribution for any designated beneficiary shall
13 be determined by the authority pursuant to regulations, in accordance
14 with section 529 of the federal Internal Revenue Code of 1986, 26
15 U.S.C.§529.
- 16 m. Statements, reports on distributions and information returns
17 relating to accounts shall be prepared, distributed, and filed to the
18 extent required by section 529 of the federal Internal Revenue Code
19 of 1986, 26 U.S.C.§529, or regulations issued thereunder.
- 20 n. The authority may charge, impose and collect reasonable
21 administrative fees and service charges in connection with any
22 agreement, contract or transaction relating to the program. These fees
23 and charges may be imposed directly on contributors or may be taken
24 as a percentage of the investment earnings on accounts.
25
- 26 9. a. An amount of no less than \$500 shall be provided by the
27 State for the qualified higher education expenses of a designated
28 beneficiary at the time of a qualified withdrawal provided that:
- 29 (1) the contributor demonstrates, to the satisfaction of the
30 authority, that the contributor participated in the program for at least
31 four years by making a qualifying minimum initial deposit or qualifying
32 minimum annual contributions, or both, as shall be determined by the
33 authority, for a designated beneficiary;
- 34 (2) the designated beneficiary demonstrates, to the satisfaction of
35 the authority, attendance or enrollment in a higher education
36 institution in this State, at the time of initial attendance or enrollment
37 in the higher education institution; and
- 38 (3) either the contributor, if an individual, or the designated
39 beneficiary demonstrates, to the satisfaction of the authority, that the
40 contributor or designated beneficiary is a New Jersey resident.
- 41 b. The amount provided under subsection a. of this section shall
42 meet the requirements of a qualified scholarship within the meaning of
43 section 117 of the federal Internal Revenue Code of 1986, 26
44 U.S.C.§117, for a designated beneficiary satisfying the requirements
45 of subsection a. of this section.

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

3
4 10. Annually, the authority shall determine a dollar amount of an
5 account, which shall not be less than \$25,000, which shall not be
6 considered in evaluating the financial needs of a student enrolled in an
7 institution of higher education located in the State of New Jersey, or
8 be deemed a financial resource or a form of financial aid or assistance
9 to a student, for purposes of determining the eligibility of a student for
10 any scholarship, grant, or monetary assistance awarded by the State;
11 nor shall the amount of any account as determined by the authority
12 provided for a designated beneficiary under this act reduce the amount
13 of any scholarship grant or monetary assistance which the student is
14 entitled to be awarded by the State.

15
16 11. a. If the investment manager is the Division of Investment in
17 the Department of the Treasury, in order to assure the availability of
18 principal of any amount contributed under this act, there shall be paid
19 to the authority for deposit in the trust, at the time of distribution,
20 subject to appropriation, such sum, if any, as shall be certified by the
21 chairman of the authority as necessary to provide that amount at the
22 time of distribution. The chairman shall make and deliver to the
23 Governor, or his designee, the certificate stating the sums, if any,
24 required to make available in the trust the amount aforesaid, and the
25 sums so certified shall be appropriated and paid to the authority during
26 the then current State fiscal year.

27 b. If the investment manager is a private entity, the investment of
28 the principal of any amount contributed under this act shall be insured
29 by the Federal Deposit Insurance Corporation or other similar insurer
30 backed by the full faith and credit of the United States up to the
31 maximum amount of insurance normally provided by the insurer.

32
33 12. a. Nothing in this act shall be construed to:

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

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

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

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

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

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

2 c. Nothing in this act establishes any obligation or liability of this
3 State or any agency or instrumentality of this State with respect to any
4 federal or State tax liability of any contributor or designated
5 beneficiary in this program.

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

10

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

16 b. "Distribution" means a withdrawal which pays the designated
17 beneficiary's qualified higher education expenses described in section
18 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529 or
19 which represents contributions net of earnings thereon.

20

21 14. If the Congress of the United States enacts legislation that
22 exempts educational savings accounts from federal income taxation,
23 sections 9 and 10 of this act shall apply with respect to such
24 educational savings accounts as if they were accounts established
25 under this act and the beneficiaries of the accounts were designated
26 beneficiaries subject to the approval of the New Jersey Higher
27 Education Assistance Authority.

28

29 15. This act shall take effect immediately.

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