

6698

I N S E N A T E

February 28, 2014

Introduced by Sens. CARLUCCI, KLEIN, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, the state finance law, the civil practice law and rules and the tax law, in relation to establishing the New York state pre-paid tuition plan

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The education law is amended by adding a new article 14-B
2 to read as follows:

3 ARTICLE 14-B

4 NEW YORK STATE PRE-PAID TUITION PLAN

5 SECTION 696. SHORT TITLE.

6 696-A. DEFINITIONS.

7 696-B. PRE-PAID TUITION PLAN BOARD.

8 696-C. POWERS AND DUTIES OF THE BOARD.

9 696-D. EXECUTIVE DIRECTOR.

10 696-E. PLAN REQUIREMENTS.

11 696-F. POWERS OF THE BOARD AND COMPTROLLER.

12 696-G. STATE GUARANTEE.

13 S 696. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
14 THE "NEW YORK STATE PRE-PAID TUITION PLAN".

15 S 696-A. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
16 SHALL HAVE THE FOLLOWING MEANINGS:

17 1. "ACCOUNT" OR "PRE-PAID TUITION ACCOUNT" SHALL MEAN AN INDIVIDUAL
18 PRE-PAID TUITION ACCOUNT ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS
19 OF THIS ARTICLE.

20 2. "ACCOUNT OWNER" SHALL MEAN A PERSON WHO ENTERS INTO A PRE-PAID
21 TUITION AGREEMENT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, INCLUDING
22 A PERSON WHO ENTERS INTO SUCH AN AGREEMENT AS A FIDUCIARY OR AGENT ON
23 BEHALF OF A TRUST, ESTATE, PARTNERSHIP, ASSOCIATION, COMPANY OR CORPO-
24 RATION. THE ACCOUNT OWNER MAY ALSO BE THE DESIGNATED BENEFICIARY OF THE
25 ACCOUNT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD13274-02-4

1 3. "BOARD" SHALL MEAN THE PRE-PAID TUITION PLAN BOARD, ESTABLISHED
2 PURSUANT TO SECTION SIX HUNDRED NINETY-SIX-B OF THIS ARTICLE.

3 4. "CITY UNIVERSITY" SHALL MEAN THE CITY UNIVERSITY OF NEW YORK.

4 5. "COMPTROLLER" SHALL MEAN THE STATE COMPTROLLER.

5 6. "CORPORATION" SHALL MEAN THE NEW YORK STATE HIGHER EDUCATION
6 SERVICES CORPORATION.

7 7. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR
8 ACCOUNTS, THE INDIVIDUAL DESIGNATED AS THE INDIVIDUAL WHOSE TUITION
9 EXPENSES ARE EXPECTED TO BE PAID FROM THE ACCOUNT OR ACCOUNTS.

10 8. "ELIGIBLE EDUCATIONAL INSTITUTION" SHALL MEAN ANY INSTITUTION OF
11 HIGHER EDUCATION DEFINED AS AN ELIGIBLE EDUCATIONAL INSTITUTION IN
12 SECTION 529(E)(5) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

13 9. "FINANCIAL ORGANIZATION" SHALL MEAN AN ORGANIZATION AUTHORIZED TO
14 DO BUSINESS IN THE STATE AND A. WHICH IS AN AUTHORIZED FIDUCIARY TO ACT
15 AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED
16 "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY
17 BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY; AND B. (I) IS
18 LICENSED OR CHARTERED BY THE DEPARTMENT OF FINANCIAL SERVICES, (II) IS
19 CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT, (III) IS SUBJECT TO
20 THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMIS-
21 SION OF THE FEDERAL GOVERNMENT, OR (IV) IS ANY OTHER ENTITY OTHERWISE
22 AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO THE PROVISIONS
23 OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT
24 OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME.

25 10. "MANAGEMENT CONTRACT" SHALL MEAN THE CONTRACT EXECUTED BY THE
26 BOARD AND A FINANCIAL ORGANIZATION SELECTED TO ACT AS A DEPOSITORY AND
27 MANAGER OF THE PLAN.

28 11. "MEMBER OF FAMILY" SHALL MEAN A FAMILY MEMBER AS DEFINED IN
29 SECTION 529 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

30 12. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT,
31 BUT SHALL NOT MEAN:

32 A. A QUALIFIED WITHDRAWAL;

33 B. A WITHDRAWAL MADE AS THE RESULT OF THE DEATH OR DISABILITY OF THE
34 DESIGNATED BENEFICIARY OF AN ACCOUNT; OR

35 C. A WITHDRAWAL MADE ON THE ACCOUNT OF A SCHOLARSHIP.

36 13. "PLAN" SHALL MEAN THE NEW YORK STATE PRE-PAID TUITION PLAN ESTAB-
37 LISHED PURSUANT TO THIS ARTICLE.

38 14. "PLAN MANAGER" SHALL MEAN A FINANCIAL ORGANIZATION SELECTED BY THE
39 BOARD TO ACT AS A DEPOSITORY AND MANAGER OF THE PLAN.

40 15. "QUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT TO
41 PAY THE QUALIFIED TUITION EXPENSES OF THE DESIGNATED BENEFICIARY.

42 16. "STATE UNIVERSITY" SHALL MEAN THE STATE UNIVERSITY OF NEW YORK.

43 17. "TUITION" SHALL MEAN ANY MANDATORY CHARGES IMPOSED BY AN ELIGIBLE
44 EDUCATIONAL INSTITUTION FOR ATTENDANCE FOR AN ACADEMIC YEAR AS A CONDI-
45 TION OF ENROLLMENT. SUCH TERM SHALL NOT INCLUDE LABORATORY FEES, ROOM
46 AND BOARD, OR OTHER SIMILAR FEES AND CHARGES.

47 18. "TUITION SAVINGS AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN THE
48 BOARD OR A FINANCIAL ORGANIZATION AND AN ACCOUNT OWNER.

49 S 696-B. PRE-PAID TUITION PLAN BOARD. 1. THE PRE-PAID TUITION PLAN
50 BOARD IS HEREBY ESTABLISHED. SUCH BOARD SHALL BE COMPOSED OF NINE
51 MEMBERS AS FOLLOWS:

52 A. THE CHANCELLOR OF THE STATE UNIVERSITY, OR HIS OR HER DESIGNEE;

53 B. THE CHANCELLOR OF THE CITY UNIVERSITY, OR HIS OR HER DESIGNEE;

54 C. THE COMPTROLLER, OR HIS OR HER DESIGNEE;

55 D. THE CHAIRMAN OF THE CORPORATION, OR HIS OR HER DESIGNEE;

56 E. THREE MEMBERS APPOINTED BY THE GOVERNOR AS FOLLOWS:

1 (I) ONE INDIVIDUAL WITH EXPERIENCE IN HIGHER EDUCATION ADMINISTRATION
2 OF AN INDEPENDENT COLLEGE OR UNIVERSITY, AND

3 (II) TWO INDIVIDUALS WITH EXPERIENCE IN ACTUARIAL PRACTICES AND
4 INVESTMENT BANKING;

5 F. A MEMBER REPRESENTING COMMUNITY COLLEGES AFFILIATED WITH THE STATE
6 UNIVERSITY APPOINTED BY THE BOARD OF TRUSTEES OF THE STATE UNIVERSITY;
7 AND

8 G. A MEMBER REPRESENTING COMMUNITY COLLEGES AFFILIATED WITH THE CITY
9 UNIVERSITY APPOINTED BY THE BOARD OF TRUSTEES OF THE CITY UNIVERSITY.

10 2. EACH MEMBER APPOINTED BY THE GOVERNOR, THE BOARD OF TRUSTEES OF THE
11 STATE UNIVERSITY OR THE BOARD OF TRUSTEES OF THE CITY UNIVERSITY SHALL
12 SERVE A TERM OF THREE YEARS. VACANCIES IN THE MEMBERSHIP OF THE BOARD
13 SHALL BE FILLED IN THE MANNER PROVIDED FOR ORIGINAL APPOINTMENTS.

14 3. THE MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION FOR THEIR
15 SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES
16 INCURRED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE.

17 4. THE BOARD AND THE PLAN SHALL BE DEEMED TO BE PUBLIC AGENCIES AND
18 SHALL BE SUBJECT TO ALL PROVISIONS OF LAW RELATING THERETO.

19 S 696-C. POWERS AND DUTIES OF THE BOARD. THE BOARD SHALL ADMINISTER
20 THE PLAN AND SHALL DEVELOP AND IMPLEMENT PROGRAMS FOR THE PREPAYMENT OF
21 UNDERGRADUATE TUITION, AT A FIXED, GUARANTEED LEVEL FOR APPLICATION AT
22 ANY TWO-YEAR OR FOUR-YEAR ELIGIBLE EDUCATIONAL INSTITUTION AS DEFINED IN
23 S 529 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR OTHER APPLI-
24 CABLE FEDERAL LAW. IN ADDITION, THE BOARD SHALL HAVE THE POWER AND DUTY
25 TO:

26 1. DEVELOP AND IMPLEMENT THE PLAN IN A MANNER CONSISTENT WITH THE
27 PROVISIONS OF THIS ARTICLE THROUGH RULES AND REGULATIONS ESTABLISHED IN
28 ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT;

29 2. MAKE ARRANGEMENTS WITH THE STATE UNIVERSITY, CITY UNIVERSITY AND
30 ANY ELIGIBLE EDUCATIONAL INSTITUTION LOCATED WITHIN THE STATE WHICH
31 CHOOSES TO PARTICIPATE, TO FULFILL OBLIGATIONS UNDER PREPAID TUITION
32 CONTRACTS FOR TWO-YEAR OR FOUR-YEAR DEGREE PROGRAMS, INCLUDING, BUT NOT
33 LIMITED TO, PAYMENT FROM THE PLAN OF THE THEN ACTUAL IN-STATE UNDERGRAD-
34 UATE TUITION COST ON BEHALF OF A QUALIFIED BENEFICIARY OF A PREPAID
35 TUITION CONTRACT TO THE INSTITUTION IN WHICH SUCH BENEFICIARY IS ADMIT-
36 TED AND ENROLLED, AND APPLICATION OF SUCH BENEFITS TOWARDS GRADUATE-LEV-
37 EL TUITION AND TOWARDS TUITION COSTS AT SUCH ELIGIBLE EDUCATIONAL INSTI-
38 TUTIONS, AS THAT TERM IS DEFINED IN 26 U.S.C. S 529 OR ANY OTHER
39 APPLICABLE SECTION OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AS
40 DETERMINED BY THE BOARD IN ITS SOLE DISCRETION. SUCH ARRANGEMENTS MUST
41 INCLUDE PLANS THAT ALLOW AN ACCOUNT OWNER TO ENTER INTO CONTRACTS IN
42 WHICH HE OR SHE CAN PURCHASE TUITION IN INSTALLMENTS EQUAL TO THE COST
43 OF SEMESTERS AS A FULL TIME STUDENT, BUT CAN ALSO INCLUDE PLANS THAT
44 WOULD ALLOW FOR THE PREPAYMENT OF TUITION FOR INDIVIDUAL COURSE CREDITS;

45 3. ENGAGE THE SERVICES OF CONSULTANTS ON A CONTRACT BASIS FOR RENDER-
46 ING PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE;

47 4. SEEK RULINGS AND OTHER GUIDANCE FROM THE UNITED STATES DEPARTMENT
48 OF TREASURY AND THE INTERNAL REVENUE SERVICE RELATING TO THE PROGRAM;

49 5. MAKE CHANGES TO THE PLAN REQUIRED FOR THE PARTICIPANTS TO OBTAIN
50 THE FEDERAL INCOME TAX BENEFITS OR TREATMENT PROVIDED BY SECTION 529 OF
51 THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY SIMILAR SUCCESSOR
52 LEGISLATION;

53 6. CHARGE, IMPOSE AND COLLECT ADMINISTRATIVE FEES AND SERVICE CHARGES
54 IN CONNECTION WITH ANY AGREEMENT, CONTRACT OR TRANSACTION RELATING TO
55 THE PLAN;

56 7. DEVELOP MARKETING PLANS AND PROMOTION MATERIAL;

1 8. ESTABLISH THE METHODS BY WHICH THE FUNDS HELD IN SUCH ACCOUNTS BE
2 DISPERSED;

3 9. ESTABLISH THE METHOD BY WHICH FUNDS SHALL BE ALLOCATED TO PAY FOR
4 ADMINISTRATIVE COSTS; AND

5 10. DO ALL THINGS NECESSARY AND PROPER TO CARRY OUT THE PURPOSES OF
6 THIS ARTICLE.

7 S 696-D. EXECUTIVE DIRECTOR. 1. THE BOARD SHALL APPOINT AND EMPLOY AN
8 EXECUTIVE DIRECTOR TO DIRECT, MANAGE AND ADMINISTER THE PLAN, AND WHO
9 SHALL BE AUTHORIZED TO EMPLOY SUCH PERSONNEL AS SHALL BE NECESSARY TO
10 IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

11 2. THE INDIVIDUAL APPOINTED AS EXECUTIVE DIRECTOR SHALL HAVE DEMON-
12 STRATED EXTENSIVE EXPERIENCE IN MANAGEMENT, FINANCE, LAW, REGULATORY
13 AFFAIRS AND/OR INVESTMENT, AND SHALL HAVE SUCH OTHER QUALIFICATIONS AS
14 THE BOARD SHALL DETERMINE.

15 3. THE EXECUTIVE DIRECTOR SHALL, IN ADDITION TO SUCH DUTIES AS THE
16 BOARD SHALL ESTABLISH:

17 A. OVERSEE THE DEVELOPMENT, STRUCTURE, EVALUATION AND IMPLEMENTATION
18 OF THE PLAN'S STRATEGIC GOALS AND OBJECTIVES;

19 B. FACILITATE COMMUNICATION AMONG AND BETWEEN THE BOARD, ADVISORY
20 COMMITTEES, EMPLOYEES, ACCOUNT OWNERS, BENEFICIARIES AND OTHER ENTITIES
21 INTERESTED IN THE PLAN;

22 C. ENHANCE THE BOARD'S ABILITY TO MAKE EFFECTIVE AND PROMPT DECISIONS
23 IN ALL MATTERS RELATED TO THE ADMINISTRATION OF THE PLAN;

24 D. WITH THE ASSISTANCE OF THE BOARD AND INVESTMENT CONSULTANTS,
25 DIRECT, MANAGE AND ADMINISTER THE PLAN'S ASSETS AND PROGRAMS; AND

26 E. REPORT PERIODICALLY AND AS REQUESTED BY THE BOARD.

27 S 696-E. PLAN REQUIREMENTS. 1. EVERY PRE-PAID TUITION ACCOUNT SHALL
28 COMPLY WITH THE PROVISIONS OF THIS SECTION.

29 2. A PRE-PAID TUITION ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES
30 TO ENTER INTO A CONTRACT FOR PRE-PAYMENT OF TUITION EXPENSES AT AN
31 INSTITUTION OF THE STATE UNIVERSITY, THE CITY UNIVERSITY OR ANY PARTIC-
32 IPATING ELIGIBLE EDUCATIONAL INSTITUTION. AN ACCOUNT OWNER MAY DESIGNATE
33 ANOTHER PERSON AS SUCCESSOR OWNER OF THE ACCOUNT IN THE EVENT OF THE
34 DEATH OF THE ORIGINAL ACCOUNT OWNER. SUCH PERSON WHO OPENS AN ACCOUNT OR
35 ANY SUCCESSOR OWNER SHALL BE CONSIDERED THE ACCOUNT OWNER.

36 A. AN APPLICATION FOR SUCH ACCOUNT SHALL BE IN THE FORM PRESCRIBED BY
37 THE BOARD AND CONTAIN THE FOLLOWING:

38 (I) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFI-
39 CATION NUMBER OF THE ACCOUNT OWNER;

40 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

41 (III) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF THE DESIGNATED
42 BENEFICIARY; AND

43 (IV) SUCH OTHER INFORMATION AS THE BOARD MAY REQUIRE.

44 B. THE BOARD MAY ESTABLISH A NOMINAL FEE FOR SUCH APPLICATION.

45 3. ANY PERSON, INCLUDING THE ACCOUNT OWNER, MAY MAKE CONTRIBUTIONS TO
46 AN ACCOUNT AFTER THE ACCOUNT IS OPENED.

47 4. CONTRIBUTIONS TO ACCOUNTS MAY BE MADE ONLY IN CASH.

48 5. FOUR YEARS MUST ELAPSE BETWEEN THE ESTABLISHMENT OF A PRE-PAID
49 TUITION ACCOUNT AND THE TIME THE FIRST QUALIFIED WITHDRAWAL IS MADE FOR
50 THE PAYMENT OF TUITION EXPENSES.

51 6. AN ACCOUNT OWNER MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN
52 ACCOUNT ON SIXTY DAYS NOTICE OR SUCH SHORTER PERIOD AS MAY BE AUTHORIZED
53 UNDER RULES GOVERNING THE PLAN. SUCH RULES SHALL INCLUDE PROVISIONS THAT
54 WILL GENERALLY ENABLE THE DETERMINATION AS TO WHETHER A WITHDRAWAL IS A
55 NONQUALIFIED WITHDRAWAL OR A QUALIFIED WITHDRAWAL.

1 7. A. AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN
2 ACCOUNT TO AN INDIVIDUAL WHO IS A MEMBER OF THE FAMILY OF THE PRIOR
3 DESIGNATED BENEFICIARY IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE
4 BOARD.

5 B. AN ACCOUNT OWNER MAY TRANSFER ALL OR A PORTION OF AN ACCOUNT TO
6 ANOTHER FAMILY TUITION ACCOUNT, THE SUBSEQUENT DESIGNATED BENEFICIARY OF
7 WHICH IS A MEMBER OF THE FAMILY AS DEFINED IN SECTION 529 OF THE INTER-
8 NAL REVENUE CODE OF 1986, AS AMENDED.

9 8. THE PLAN SHALL PROVIDE SEPARATE ACCOUNTING FOR EACH DESIGNATED
10 BENEFICIARY.

11 9. NO ACCOUNT OWNER OR DESIGNATED BENEFICIARY OF ANY ACCOUNT SHALL BE
12 PERMITTED TO DIRECT THE INVESTMENT OF ANY CONTRIBUTIONS TO AN ACCOUNT OR
13 THE EARNINGS THEREON.

14 10. NEITHER AN ACCOUNT OWNER NOR A DESIGNATED BENEFICIARY SHALL USE AN
15 INTEREST IN AN ACCOUNT AS SECURITY FOR A LOAN. ANY PLEDGE OF AN INTEREST
16 IN AN ACCOUNT SHALL BE OF NO FORCE AND EFFECT.

17 11. A. IF THERE IS ANY DISTRIBUTION FROM AN ACCOUNT TO ANY INDIVIDUAL
18 OR FOR THE BENEFIT OF ANY INDIVIDUAL DURING A CALENDAR YEAR, SUCH
19 DISTRIBUTION SHALL BE REPORTED TO THE INTERNAL REVENUE SERVICE AND THE
20 ACCOUNT OWNER, THE DESIGNATED BENEFICIARY OR THE DISTRIBUTE TO THE
21 EXTENT REQUIRED BY FEDERAL LAW OR REGULATION.

22 B. STATEMENTS SHALL BE PROVIDED TO EACH ACCOUNT OWNER AT LEAST ONCE
23 EACH YEAR WITHIN SIXTY DAYS AFTER THE END OF THE TWELVE MONTH PERIOD TO
24 WHICH THEY RELATE. THE STATEMENT SHALL IDENTIFY THE CONTRIBUTIONS MADE
25 DURING A PRECEDING TWELVE MONTH PERIOD, THE TOTAL CONTRIBUTIONS MADE TO
26 THE ACCOUNT THROUGH THE END OF THE PERIOD, THE VALUE OF THE ACCOUNT AT
27 THE END OF SUCH PERIOD, DISTRIBUTIONS MADE DURING SUCH PERIOD AND ANY
28 OTHER INFORMATION THAT THE BOARD SHALL REQUIRE TO BE REPORTED TO THE
29 ACCOUNT OWNER.

30 C. STATEMENTS AND INFORMATION RELATING TO ACCOUNTS SHALL BE PREPARED
31 AND FILED TO THE EXTENT REQUIRED BY FEDERAL AND STATE TAX LAW.

32 12. A. A LOCAL GOVERNMENT OR ORGANIZATION DESCRIBED IN SECTION
33 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, MAY OPEN AND
34 BECOME THE ACCOUNT OWNER OF AN ACCOUNT TO FUND SCHOLARSHIPS FOR PERSONS
35 WHOSE IDENTITY WILL BE DETERMINED UPON DISBURSEMENT.

36 B. IN THE CASE OF ANY ACCOUNT OPENED PURSUANT TO PARAGRAPH A OF THIS
37 SUBDIVISION THE REQUIREMENT SET FORTH IN SUBDIVISION TWO OF THIS SECTION
38 THAT A DESIGNATED BENEFICIARY BE DESIGNATED WHEN AN ACCOUNT IS OPENED
39 SHALL NOT APPLY AND EACH INDIVIDUAL WHO RECEIVES AN INTEREST IN SUCH
40 ACCOUNT AS A SCHOLARSHIP SHALL BE TREATED AS A DESIGNATED BENEFICIARY
41 WITH RESPECT TO SUCH INTEREST.

42 13. AN ANNUAL FEE MAY BE IMPOSED UPON THE ACCOUNT OWNER FOR THE MAIN-
43 TENANCE OF THE ACCOUNT.

44 14. THE PLAN SHALL DISCLOSE THE FOLLOWING INFORMATION IN WRITING TO
45 EACH ACCOUNT OWNER AND PROSPECTIVE ACCOUNT OWNER OF A PRE-PAID TUITION
46 ACCOUNT:

47 A. THE TERMS AND CONDITIONS FOR PURCHASING A PRE-PAID TUITION ACCOUNT;

48 B. ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;

49 C. THE PERSON OR ENTITY ENTITLED TO TERMINATE THE TUITION PRE-PAYMENT
50 AGREEMENT;

51 D. THE PERIOD OF TIME DURING WHICH A BENEFICIARY MAY RECEIVE BENEFITS
52 UNDER THE TUITION PRE-PAYMENT AGREEMENT;

53 E. THE TERMS AND CONDITIONS UNDER WHICH MONEY MAY BE WHOLLY OR
54 PARTIALLY WITHDRAWN FROM THE PLAN, INCLUDING, BUT NOT LIMITED TO, ANY
55 REASONABLE CHARGES AND FEES THAT MAY BE IMPOSED FOR WITHDRAWAL;

1 F. THE PROBABLE TAX CONSEQUENCES ASSOCIATED WITH CONTRIBUTIONS TO AND
2 DISTRIBUTIONS FROM ACCOUNTS; AND

3 G. ALL OTHER RIGHTS AND OBLIGATIONS PURSUANT TO PRE-PAID TUITION
4 AGREEMENTS, AND ANY OTHER TERMS, CONDITIONS AND PROVISIONS DEEMED NECES-
5 SARY AND APPROPRIATE BY THE BOARD PURSUANT TO SECTION SIX HUNDRED NINE-
6 TY-SIX-C OF THIS ARTICLE.

7 15. PRE-PAID TUITION SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION
8 FOURTEEN-C OF THE BANKING LAW AND THE "TRUTH-IN-SAVINGS" REGULATIONS
9 PROMULGATED THEREUNDER.

10 16. NOTHING IN THIS ARTICLE OR IN ANY PRE-PAID TUITION SAVINGS AGREE-
11 MENT ENTERED INTO PURSUANT TO THIS ARTICLE SHALL BE CONSTRUED AS A GUAR-
12 ANTEE BY THE STATE OR ANY COLLEGE THAT A BENEFICIARY WILL BE ADMITTED TO
13 A COLLEGE OR UNIVERSITY, OR, UPON ADMISSION TO A COLLEGE WILL BE PERMIT-
14 TED TO CONTINUE TO ATTEND OR WILL RECEIVE A DEGREE FROM A COLLEGE OR
15 UNIVERSITY.

16 S 696-F. POWERS OF THE BOARD AND COMPTROLLER.

17 1. THE BOARD, IN CONSULTATION WITH THE COMPTROLLER, MAY SOLICIT
18 PROPOSALS FROM FINANCIAL ORGANIZATIONS TO ACT AS DEPOSITORIES AND MANAG-
19 ERS OF THE PLAN. FINANCIAL ORGANIZATIONS SUBMITTING PROPOSALS SHALL
20 DESCRIBE THE INVESTMENT INSTRUMENT WHICH WILL BE HELD IN ACCOUNTS. THE
21 BOARD SHALL SELECT AS PROGRAM DEPOSITORIES AND MANAGERS THE FINANCIAL
22 ORGANIZATION, FROM AMONG THE BIDDING FINANCIAL ORGANIZATIONS THAT DEMON-
23 STRATES THE MOST ADVANTAGEOUS COMBINATION, BOTH TO POTENTIAL PROGRAM
24 PARTICIPANTS AND THIS STATE, OF THE FOLLOWING FACTORS:

25 A. FINANCIAL STABILITY AND INTEGRITY OF THE FINANCIAL ORGANIZATION;

26 B. THE SAFETY OF THE INVESTMENT INSTRUMENT BEING OFFERED;

27 C. THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS
28 OF HIGHER EDUCATION;

29 D. THE ABILITY OF THE FINANCIAL ORGANIZATION TO SATISFY RECORDKEEPING
30 AND REPORTING REQUIREMENTS;

31 E. THE FINANCIAL ORGANIZATION'S PLAN FOR PROMOTING THE PLAN AND THE
32 INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE PLAN;

33 F. THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR OPENING
34 ACCOUNTS;

35 G. THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE
36 FINANCIAL ORGANIZATION WILL REQUIRE;

37 H. THE ABILITY OF BANKING ORGANIZATIONS TO ACCEPT ELECTRONIC WITH-
38 DRAWALS, INCLUDING PAYROLL DEDUCTION PLANS; AND

39 I. OTHER BENEFITS TO THE STATE OR ITS RESIDENTS INCLUDED IN THE
40 PROPOSAL, INCLUDING FEES PAYABLE TO THE STATE TO COVER EXPENSES OF OPER-
41 ATION OF THE PROGRAM.

42 2. THE BOARD MAY ENTER INTO A CONTRACT WITH A FINANCIAL ORGANIZATION.
43 SUCH FINANCIAL ORGANIZATION MANAGEMENT MAY PROVIDE ONE OR MORE TYPES OF
44 INVESTMENT INSTRUMENT.

45 3. THE BOARD MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR THE
46 PLAN.

47 4. A MANAGEMENT CONTRACT SHALL INCLUDE, AT A MINIMUM, TERMS REQUIRING
48 THE FINANCIAL ORGANIZATION TO:

49 A. TAKE ANY ACTION REQUIRED TO KEEP THE PLAN IN COMPLIANCE WITH
50 REQUIREMENTS OF THIS ARTICLE;

51 B. KEEP ADEQUATE RECORDS OF EACH ACCOUNT, KEEP EACH ACCOUNT SEGREGATED
52 FROM EACH OTHER ACCOUNT, AND PROVIDE THE BOARD WITH THE INFORMATION
53 NECESSARY TO PREPARE THE STATEMENTS REQUIRED BY THIS ARTICLE;

54 C. PROVIDE THE COMPTROLLER OR HIS OR HER DESIGNEE ACCESS TO THE BOOKS
55 AND RECORDS OF THE PLAN MANAGER TO THE EXTENT NEEDED TO DETERMINE
56 COMPLIANCE WITH THE CONTRACT;

1 D. HOLD ALL ACCOUNTS FOR THE BENEFIT OF THE ACCOUNT OWNER;

2 E. BE AUDITED AT LEAST ANNUALLY BY A FIRM OF CERTIFIED PUBLIC ACCOUNT-
3 ANTS SELECTED BY THE COMPTROLLER AND THAT THE RESULTS OF SUCH AUDIT BE
4 PROVIDED TO THE BOARD AND THE COMPTROLLER;

5 F. PROVIDE THE BOARD AND THE COMPTROLLER WITH COPIES OF ALL REGULATORY
6 FILINGS AND REPORTS MADE BY IT DURING THE TERM OF THE MANAGEMENT
7 CONTRACT OR WHILE IT IS HOLDING ANY ACCOUNTS, OTHER THAN CONFIDENTIAL
8 FILINGS OR REPORTS THAT WILL NOT BECOME PART OF THE PLAN. THE PLAN
9 MANAGER SHALL MAKE AVAILABLE FOR REVIEW BY THE COMPTROLLER THE RESULTS
10 OF ANY PERIODIC EXAMINATION OF SUCH MANAGER BY ANY STATE OR FEDERAL
11 BANKING, INSURANCE OR SECURITIES COMMISSION, EXCEPT TO THE EXTENT THAT
12 SUCH REPORT OR REPORTS MAY NOT BE DISCLOSED UNDER APPLICABLE LAW OR THE
13 RULES OF SUCH COMMISSION; AND

14 G. ENSURE THAT ANY DESCRIPTION OF THE PROGRAM, WHETHER IN WRITING OR
15 THROUGH THE USE OF ANY MEDIA, IS CONSISTENT WITH THE MARKETING PLAN
16 DEVELOPED IN THE MEMORANDUM OF UNDERSTANDING PURSUANT TO THE PROVISIONS
17 OF SECTION SIX HUNDRED NINETY-FIVE-C OF THIS ARTICLE.

18 5. THE COMPTROLLER MAY PROVIDE THAT AN AUDIT SHALL BE CONDUCTED OF THE
19 OPERATIONS AND FINANCIAL POSITION OF THE PLAN DEPOSITORY AND MANAGER AT
20 ANY TIME IF THE BOARD OR THE COMPTROLLER HAS ANY REASON TO BE CONCERNED
21 ABOUT THE FINANCIAL POSITION, THE RECORDKEEPING PRACTICES, OR THE STATUS
22 OF ACCOUNTS OF SUCH PLAN DEPOSITORY AND MANAGER.

23 6. DURING THE TERM OF ANY CONTRACT WITH A PLAN MANAGER, THE COMP-
24 TROLLER SHALL CONDUCT AN EXAMINATION OF SUCH MANAGER AND ITS HANDLING OF
25 ACCOUNTS. SUCH EXAMINATION SHALL BE CONDUCTED AT LEAST BIENNIALLY IF
26 SUCH MANAGER IS NOT OTHERWISE SUBJECT TO PERIODIC EXAMINATION BY THE
27 SUPERINTENDENT OF FINANCIAL SERVICES, THE FEDERAL DEPOSIT INSURANCE
28 CORPORATION OR OTHER SIMILAR ENTITY.

29 7. A. IF SELECTION OF A FINANCIAL ORGANIZATION AS A PLAN MANAGER OR
30 DEPOSITORY IS NOT RENEWED, AFTER THE END OF ITS TERM:

31 (I) ACCOUNTS PREVIOUSLY ESTABLISHED AND HELD IN INVESTMENT INSTRUMENTS
32 AT SUCH FINANCIAL ORGANIZATION MAY BE TERMINATED;

33 (II) ADDITIONAL CONTRIBUTIONS MAY BE MADE TO SUCH ACCOUNTS;

34 (III) NO NEW ACCOUNTS MAY BE PLACED WITH SUCH FINANCIAL ORGANIZATION;
35 AND

36 (IV) EXISTING ACCOUNTS HELD BY SUCH DEPOSITORY SHALL REMAIN SUBJECT TO
37 ALL OVERSIGHT AND REPORTING REQUIREMENTS ESTABLISHED BY THE COMPTROLLER.

38 B. IF THE COMPTROLLER TERMINATES A FINANCIAL ORGANIZATION AS A PLAN
39 MANAGER OR DEPOSITORY, HE OR SHE SHALL TAKE CUSTODY OF ACCOUNTS HELD BY
40 SUCH FINANCIAL ORGANIZATION AND SHALL SEEK TO PROMPTLY TRANSFER SUCH
41 ACCOUNTS TO ANOTHER FINANCIAL ORGANIZATION THAT IS SELECTED AS A PLAN
42 MANAGER OR DEPOSITORY AND INTO INVESTMENT INSTRUMENTS AS SIMILAR TO THE
43 ORIGINAL INSTRUMENTS AS POSSIBLE.

44 S 696-G. STATE GUARANTEE. 1. NOTHING IN THIS ARTICLE SHALL ESTABLISH
45 OR BE DEEMED TO ESTABLISH ANY OBLIGATION OF THE STATE, THE COMPTROLLER
46 OR ANY AGENCY OR INSTRUMENTALITY OF THE STATE TO GUARANTEE ANY BENEFITS
47 TO ANY ACCOUNT OWNER OR DESIGNATED BENEFICIARY.

48 2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,
49 IN ORDER TO ENSURE THAT THE PLAN IS ABLE TO MEET ITS OBLIGATIONS, THE
50 GOVERNOR SHALL INCLUDE IN THE BUDGET SUBMITTED PURSUANT TO SECTION TWEN-
51 TY-TWO OF THE STATE FINANCE LAW, AN APPROPRIATION SUFFICIENT FOR THE
52 PURPOSE OF ENSURING THAT THE PLAN CAN MEET ITS OBLIGATIONS. ANY SUMS
53 APPROPRIATED FOR SUCH PURPOSE SHALL BE TRANSFERRED TO THE PLAN. ALL
54 AMOUNTS PAID INTO THE PLAN PURSUANT TO THIS SUBDIVISION SHALL CONSTITUTE
55 AND BE ACCOUNTED FOR AS ADVANCES BY THE STATE TO THE PLAN AND, SUBJECT
56 TO THE RIGHTS OF THE PLAN'S CONTRACT HOLDERS, SHALL BE REPAID TO THE

STATE WITHOUT INTEREST FROM AVAILABLE OPERATING REVENUE OF THE PLAN IN EXCESS OF AMOUNTS REQUIRED FOR THE PAYMENT OF THE OBLIGATIONS OF THE PLAN. AS USED IN THIS SECTION, "OBLIGATIONS OF THE PLAN" MEANS AMOUNTS REQUIRED FOR THE PAYMENT OF CONTRACT BENEFITS OR OTHER OBLIGATIONS OF THE PLAN, THE MAINTENANCE OF THE PLAN, AND OPERATING EXPENSES FOR THE CURRENT FISCAL YEAR.

S 2. The state finance law is amended by adding a new section 78-c to read as follows:

S 78-C. NEW YORK STATE PRE-PAID TUITION PLAN FUND. 1. THERE IS HEREBY ESTABLISHED IN THE SOLE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE NEW YORK STATE PRE-PAID TUITION PLAN FUND. ALL PAYMENTS FROM SUCH FUND SHALL BE MADE IN ACCORDANCE WITH ARTICLE FOUR-TEEN-B OF THE EDUCATION LAW.

2. (A) THE COMPTROLLER, WITH THE CONSENT OF THE PRE-PAID TUITION PLAN BOARD, SHALL INVEST THE ASSETS OF THE FUND IN INVESTMENTS AUTHORIZED BY ARTICLE FOUR-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, PROVIDED HOWEVER, THAT:

(I) THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW SHALL NOT APPLY EXCEPT FOR THE FIRST CLAUSE OF SUBPARAGRAPH (II) OF SUCH PARAGRAPH; AND

(II) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION SEVEN OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW OR ANY OTHER LAW TO THE CONTRARY, THE ASSETS OF THE FUND MAY BE INVESTED IN ANY FUNDING AGREEMENT ISSUED IN ACCORDANCE WITH SECTION THREE THOUSAND TWO HUNDRED TWENTY-TWO OF THE INSURANCE LAW BY A DOMESTIC LIFE INSURANCE COMPANY OR A FOREIGN LIFE INSURANCE COMPANY DOING BUSINESS IN THIS STATE, SUBJECT TO THE FOLLOWING:

(1) SUCH A FUNDING AGREEMENT MAY PROVIDE FOR A GUARANTEED MINIMUM RATE OF RETURN;

(2) SUCH A FUNDING AGREEMENT MAY BE ALLOCATED AS EITHER A SEPARATE ACCOUNT OR A GENERAL ACCOUNT OF THE ISSUER, AS THE COMPTROLLER MAY DECIDE;

(3) TOTAL INVESTMENTS OF THE FUND PURSUANT TO THIS PARAGRAPH IN ANY FUNDING AGREEMENTS ISSUED BY A SINGLE LIFE INSURANCE COMPANY WHICH ARE ALLOCATED AS A GENERAL ACCOUNT OF THE ISSUER SHALL NOT, IN THE AGGREGATE, EXCEED THREE HUNDRED FIFTY MILLION DOLLARS; AND

(4) NO ASSETS OF THE FUND SHALL BE INVESTED IN ANY SUCH FUNDING AGREEMENT UNLESS, AT THE TIME OF SUCH INVESTMENT, THE GENERAL OBLIGATIONS OR FINANCIAL STRENGTH OF THE ISSUER HAVE RECEIVED EITHER THE HIGHEST OR SECOND HIGHEST RATING BY TWO NATIONALLY RECOGNIZED RATING SERVICES OR BY ONE NATIONALLY RECOGNIZED RATING SERVICE IN THE EVENT THAT ONLY ONE SUCH SERVICE RATES SUCH OBLIGATIONS.

(B) FUND ASSETS SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH OTHER ASSETS. THE PRE-PAID TUITION PLAN BOARD MAY ENTER INTO CONTRACTS TO PROVIDE FOR INVESTMENT ADVICE AND MANAGEMENT, CUSTODIAL SERVICES AND OTHER PROFESSIONAL SERVICES FOR THE ADMINISTRATION AND INVESTMENT OF THE PLAN. ADMINISTRATIVE FEES, COSTS AND EXPENSES, INCLUDING INVESTMENT FEES AND EXPENSES, SHALL BE PAID FROM THE ASSETS OF THE FUND.

3. THE COMPTROLLER SHALL PROVIDE FOR THE ADMINISTRATION OF THE TRUST FUND, INCLUDING MAINTAINING PARTICIPANT RECORDS AND ACCOUNTS, AND PROVIDING ANNUAL AUDITED REPORTS. THE COMPTROLLER MAY ENTER INTO CONTRACTS TO PROVIDE ADMINISTRATIVE SERVICES AND REPORTING.

S 3. Section 5205 of the civil practice law and rules is amended by adding a new subdivision (p) to read as follows:

(P) EXEMPTION FOR NEW YORK STATE PRE-PAID TUITION PLAN MONIES. MONIES IN AN ACCOUNT CREATED PURSUANT TO ARTICLE FOURTEEN-B OF THE EDUCATION LAW ARE EXEMPT FROM APPLICATION TO THE SATISFACTION OF A MONEY JUDGMENT AS FOLLOWS:

1. ONE HUNDRED PERCENT OF MONIES IN AN ACCOUNT IN CONNECTION WITH A PRE-PAID TUITION PLAN ESTABLISHED PURSUANT TO SUCH ARTICLE IS EXEMPT; AND

2. ONE HUNDRED PERCENT OF MONIES IN AN ACCOUNT IS EXEMPT WHERE THE JUDGMENT DEBTOR IS THE ACCOUNT OWNER OR DESIGNATED BENEFICIARY OF SUCH ACCOUNT.

FOR THE PURPOSES OF THIS SUBDIVISION, THE TERMS "ACCOUNT OWNER" AND "DESIGNATED BENEFICIARY" SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN ARTICLE FOURTEEN-B OF THE EDUCATION LAW.

S 4. Subparagraph (A) of paragraph 2 of subsection (t) of section 606 of the tax law, as amended by section 1 of part N of chapter 85 of the laws of 2002, is amended to read as follows:

(A) The term "allowable college tuition expenses" shall mean the amount of qualified college tuition expenses of eligible students paid by the taxpayer during the taxable year, limited to [ten] TWENTY thousand dollars for each such student;

S 5. Paragraph 34 of subsection (b) of section 612 of the tax law, as amended by chapter 535 of the laws of 2000, subparagraph (B) as amended by chapter 593 of the laws of 2003, is amended to read as follows:

(34) (A) Excess distributions received during the taxable year by a distributee of a family tuition account established under the New York state college choice tuition savings program provided for under article fourteen-A of the education law, OR OF A PRE-PAID TUITION ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOURTEEN-B OF THE EDUCATION LAW, to the extent such excess distributions are deemed attributable to deductible contributions under paragraph thirty-two of subsection (c) of this section.

(B) (i) The term "excess distributions" means distributions which are not

(I) qualified withdrawals within the meaning of subdivision nine of section six hundred ninety-five-b OR SUBDIVISION FIFTEEN OF SECTION SIX HUNDRED NINETY-SIX-A of the education law;

(II) withdrawals made as a result of the death or disability of the designated beneficiary within the meaning of subdivision ten of section six hundred ninety-five-b OR SUBDIVISION TWELVE OF SECTION SIX HUNDRED NINETY-SIX-A of such law; or

(III) transfers described in paragraph b of subdivision six of section six hundred ninety-five-e of such law.

(ii) Excess distributions shall be deemed attributable to deductible contributions to the extent the amount of any such excess distribution, when added to all previous excess distributions from the account, exceeds the aggregate of all nondeductible contributions to the account.

S 6. Paragraphs 32 and 33 of subsection (c) of section 612 of the tax law, paragraph 32 as amended by chapter 81 of the laws of 2008 and paragraph 33 as added by chapter 546 of the laws of 1997, are amended to read as follows:

(32) Contributions made during the taxable year by an account owner to one or more family tuition accounts established under the New York state college choice tuition savings program provided for under article fourteen-A, OR TO A PRE-PAID TUITION ACCOUNT PURSUANT TO ARTICLE FOURTEEN-B of the education law, to the extent not deductible or eligible for credit for federal income tax purposes, provided, however, the exclusion

1 provided for in this paragraph shall not exceed [five] TEN thousand
2 dollars for an individual or head of household, and for married couples
3 who file joint tax returns, shall not exceed [ten] TWENTY thousand
4 dollars; provided, further, that such exclusion shall be available only
5 to the account owner and not to any other person.
6 (33) Distributions from a family tuition account established under the
7 New York state college choice tuition savings program provided for under
8 article fourteen-A, OR FROM A PRE-PAID TUITION ACCOUNT PURSUANT TO ARTI-
9 CLE FOURTEEN-B of the education law, to the extent includible in gross
10 income for federal income tax purposes.
11 S 7. This act shall take effect immediately and shall apply to taxable
12 years commencing after December 31, 2014.