S T A T E O F N E W Y O R K

4593

2013-2014 Regular Sessions

I N S E N A T E

April 12, 2013

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the creation of the New York state tuition savings program; to amend the state finance law, in relation to establishing the New York state pre-pay tuition fund; and to amend the tax law, in relation to reducing distributions from the New York state pre-pay tuition savings program from adjusted gross income

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

Section 1. The education law is amended by adding a new section 355-d to read as follows:

S 355-D. NEW YORK STATE PRE-PAY TUITION SAVINGS PROGRAM. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "PARTICIPANT" SHALL MEAN A NEW YORK STATE RESIDENT WHO ENROLLS AN ELIGIBLE CHILD AND MAKES PAYMENTS ON BEHALF OF SUCH ELIGIBLE CHILD, AND SHALL INCLUDE BUT NOT BE LIMITED TO SUCH ELIGIBLE CHILD'S PARENT OR GUARDIAN.

B. "ELIGIBLE CHILD" SHALL MEAN A CHILD FIVE YEARS OF AGE OR OLDER, WHO IS ENROLLED IN THE NEW YORK STATE PRE-PAY TUITION PROGRAM BY A PARTICIPANT.

C. "THE FUND" SHALL MEAN THE NEW YORK STATE PRE-PAY TUITION FUND ESTABLISHED BY SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.

D. "TOTAL COST OF EDUCATION" SHALL MEAN THE AVERAGE SYSTEM-WIDE YEARLY TOTAL COST OF A FOUR YEAR EDUCATION AT THE STATE UNIVERSITY OF NEW YORK INCLUDING TUITION, ROOM AND BOARD AND ALL APPLICABLE FEES. DURING EACH YEAR OF PARTICIPATION, THE TOTAL COST OF EDUCATION SHALL BE CALCULATED BASED UPON THE CURRENT YEAR'S COST UNTIL THE FINAL PAYMENT IS MADE.

2. THE NEW YORK STATE PRE-PAY TUITION SAVINGS PROGRAM IS HEREBY ESTABLISHED AND SHALL BE CONTROLLED AND ADMINISTERED BY THE NEW YORK STATE

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

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COMPTROLLER OR HIS OR HER DESIGNEE IN CONSULTATION WITH THE CHANCELLOR OF THE STATE UNIVERSITY OF NEW YORK (SUNY) OR HIS OR HER DESIGNEE AND THE CHANCELLOR OF THE CITY UNIVERSITY OF NEW YORK (CUNY) OR HIS OR HER DESIGNEE.

3. A. A PARTICIPANT MAY ENROLL AN ELIGIBLE CHILD BEGINNING AT FIVE YEARS OF AGE AND PAY ONE-THIRD OF THE TOTAL COST OF EDUCATION EACH YEAR FOR THE DURATION OF TWELVE CONSECUTIVE YEARS.

B. A PARTICIPANT MAY ENROLL AN ELIGIBLE CHILD BEGINNING AT SIX YEARS OF AGE AND PAY ONE-THIRD OF THE TOTAL COST OF EDUCATION EACH YEAR FOR THE DURATION OF TWELVE YEARS.

C. IF A PARTICIPANT ENROLLS AN ELIGIBLE CHILD AT AGE SEVEN OR THEREAFTER, YEARLY PAYMENTS SHALL BE DETERMINED BY THE SUNY CHANCELLOR OR HIS OR HER DESIGNEE AND APPROVED BY THE STATE COMPTROLLER OR HIS OR HER DESIGNEE BASED UPON A FORMULA THAT CONSIDERS THE CHILD'S AGE AT THE TIME OF ENROLLMENT AND EVENLY DIVIDES THE YEARLY AVERAGE TOTAL COST OF A FOUR YEAR SUNY EDUCATION BUT ENSURES THAT THE LAST PAYMENT WILL BE RECEIVED WITHIN THE CALENDAR YEAR WHEN THE ELIGIBLE CHILD GRADUATES OR IS SCHEDULED TO GRADUATE HIGH SCHOOL.

D. (1) UPON ENROLLMENT OF AN ELIGIBLE CHILD INTO THE PROGRAM, THE PARTICIPANT SHALL RECEIVE A BILL FROM THE STATE COMPTROLLER OR HIS OR HER DESIGNEE CLEARLY STATING THE TOTAL COST OF EDUCATION FOR THAT YEAR, AND THE MONTHLY PAYMENT AMOUNT DUE TO BE DEPOSITED IN THE FUND, PROVIDED HOWEVER, THAT AT ANY TIME WITHIN SUCH YEAR, THE TOTAL COST OF EDUCATION FOR THAT YEAR MAY BE PAID IN FULL WITHOUT PENALTY.

(2) PROVIDED FURTHER HOWEVER, THAT A PAYMENT PLAN OTHER THAN MONTHLY BILLING MAY BE ESTABLISHED BASED ON RULES AND REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

E. (1) PAYMENTS DEPOSITED INTO THE FUND SHALL NOT BE ELIGIBLE FOR WITHDRAWAL AT ANY TIME BEFORE THE ELIGIBLE CHILD FOR WHOM THE PARTICIPANT IS PAYING, REACHES THE AGE OF HIGH SCHOOL GRADUATION OR THE AGE WHEN SUCH CHILD SHOULD HAVE GRADUATED.

(2) UPON THE ELIGIBLE CHILD REACHING THE AGE OF HIGH SCHOOL GRADUATION, THE PARTICIPANT MAY CHOOSE TO WITHDRAW THE TOTAL BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND AND NO LONGER PARTICIPATE IN THE PROGRAM.

F. (1) UPON SUBMISSION OF THE LAST PAYMENT, THE ACTUAL COST OF WHAT A TWO YEAR PROGRAM AT SUNY, A TWO YEAR PROGRAM AT CUNY AND A FOUR YEAR PROGRAM AT CUNY WOULD HAVE COST IN EACH YEAR THAT A PARTICIPANT COMPLETED PAYMENTS FOR THE FIRST YEAR, THE SECOND YEAR, THE THIRD YEAR AND THE FOURTH YEAR OF THE TOTAL COST OF EDUCATION, SHALL BE CALCULATED.

(2) THE ACTUAL COST SHALL BE CALCULATED IN THE SAME MANNER AS THE TOTAL COST OF EDUCATION BY THE COMPTROLLER OR HIS OR HER DESIGNEE IN CONSULTATION WITH THE SUNY CHANCELLOR OR HIS OR HER DESIGNEE AND THE CUNY CHANCELLOR OR HIS OR HER DESIGNEE.

G. ONCE AN ELIGIBLE CHILD HAS GRADUATED HIGH SCHOOL OR HAS REACHED THE AGE OF SUCH CHILD'S SCHEDULED HIGH SCHOOL GRADUATION, AND IT HAS BEEN DETERMINED THAT ALL REQUIRED PAYMENTS HAVE BEEN DEPOSITED INTO THE FUND, THE PARTICIPANTS HAVE THE FOLLOWING OPTIONS:

(1) SUNY. (I) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, IS ACCEPTED TO, AND ENROLLS IN A FOUR YEAR DEGREE PROGRAM AT SUNY, THEN SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND FOR THE DURATION OF FOUR CONSECUTIVE YEARS IN SUCH SUNY PROGRAM AND THE COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE AND PROVIDE ANY REFUNDS DUE TO THE PARTICIPANT, BASED UPON RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(II) (A) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED TO, AND ENROLLS IN A TWO YEAR PROGRAM AT SUNY, THEN SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE AND SHALL PROVIDE A REFUND TO THE PARTICIPANT FOR THE DIFFERENCE BETWEEN THE COST OF A TWO YEAR PROGRAM AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT, CALCULATED UPON SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT AND BASED UPON RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(B) AT THAT TIME, SUCH PARTICIPANT SHALL HAVE THE OPTION TO WITHDRAW THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND, OR MAY CHOOSE TO KEEP THE REMAINDER IN THE FUND TO BE APPLIED TO A FOUR YEAR PROGRAM IN THE EVENT THAT THE ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM.

(C) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT CUNY, THE PARTICIPANT SHALL RECEIVE A REFUND FOR THE DIFFERENCE BETWEEN THE ACTUAL COST OF EDUCATION AT CUNY AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT, CALCULATED AT THE TIME OF THE SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT.

(III) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT A NEW YORK STATE PRIVATE SCHOOL, THE PARTICIPANT MAY CHOOSE TO HAVE THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND, APPLIED TO THE COST OF EDUCATION AT SUCH PRIVATE SCHOOL.

(IV) IF SUCH ELIGIBLE CHILD TRANSFERS TO AN OUT-OF-STATE COLLEGE, THE PARTICIPANT SHALL RECEIVE THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND.

(2) CUNY. (I) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED TO AND ENROLLS IN A FOUR YEAR DEGREE PROGRAM AT CUNY, THEN SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE, AND SHALL PROVIDE A REFUND TO THE PARTICIPANT FOR THE DIFFERENCE BETWEEN THE ACTUAL COST OF EDUCATION FOR A FOUR YEAR PROGRAM AT CUNY AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT, CALCULATED AT THE TIME OF THE SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT BASED UPON RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(II) (A) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED TO AND ENROLLS IN A TWO YEAR PROGRAM AT CUNY, THEN SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE AND SHALL PROVIDE A REFUND TO THE PARTICIPANT FOR THE DIFFERENCE BETWEEN THE COST OF A TWO YEAR PROGRAM AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT, CALCULATED UPON SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT AND BASED UPON RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(B) AT THAT TIME, SUCH PARTICIPANT SHALL HAVE THE OPTION TO WITHDRAW THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND, OR MAY CHOOSE TO KEEP THE REMAINDER IN THE FUND TO BE APPLIED TO A FOUR YEAR PROGRAM IN THE EVENT THAT THE ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM.

(C) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT CUNY, THE PARTICIPANT SHALL RECEIVE A REFUND FOR THE DIFFERENCE BETWEEN THE ACTUAL COST OF EDUCATION AT CUNY AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT,

CALCULATED AT THE TIME OF THE SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT.

(D) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT SUNY, THEN SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE, AND PROVIDE ANY REFUNDS DUE TO THE PARTICIPANT, BASED UPON RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(III) IF AN ELIGIBLE STUDENT TRANSFERS TO A NEW YORK STATE PRIVATE SCHOOL, THE PARTICIPANT MAY CHOOSE TO HAVE THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND, APPLIED TO THE COST OF EDUCATION AT SUCH PRIVATE SCHOOL.

(IV) IF SUCH ELIGIBLE CHILD TRANSFERS TO AN OUT-OF-STATE COLLEGE, THE PARTICIPANT SHALL RECEIVE THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND.

(3) NEW YORK STATE PRIVATE SCHOOL. IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED TO AND ENROLLS IN A FOUR YEAR DEGREE PROGRAM OR A TWO YEAR DEGREE PROGRAM AT A NEW YORK STATE PRIVATE SCHOOL, A PARTICIPANT MAY CHOOSE TO HAVE THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND APPLIED TO THE COST OF EDUCATION AT SUCH PRIVATE SCHOOL OR SUCH PARTICIPANT MAY CHOOSE TO WITHDRAW THE TOTAL CONTRIBUTION THAT SUCH PARTICIPANT PAID INTO THE FUND BASED UPON RULES AND REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(4) OUT-OF-STATE SCHOOL OR NON-ACCEPTANCE INTO A NEW YORK STATE COLLEGE, OR IF AN ELIGIBLE CHILD DOES NOT APPLY TO COLLEGE. IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED TO AND ENROLLS IN AN OUT-OF-STATE SCHOOL OR IF A PARTICIPANT'S ELIGIBLE CHILD DOES NOT GET ACCEPTED INTO A NEW YORK STATE COLLEGE, OR CHOOSES NOT TO ATTEND COLLEGE, THEN SUCH PARTICIPANT SHALL WITHDRAW THE TOTAL CONTRIBUTION THAT SUCH PARTICIPANT PAID INTO THE FUND BASED UPON RULES AND REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(5) NON-PAYMENT. (I) IF A PARTICIPANT CANNOT MAKE THE REQUIRED PAYMENTS AT ANY TIME AFTER ENROLLMENT OF AN ELIGIBLE CHILD, THEN SUCH PARTICIPANT MAY WITHDRAW THE BALANCE THAT SUCH PARTICIPANT HAS PAID INTO THE FUND AT SUCH TIME THAT THE ELIGIBLE CHILD GRADUATES HIGH SCHOOL OR REACHES THE AGE OF SCHEDULED GRADUATION.

(II) IF SUCH PARTICIPANT CANNOT MAKE PAYMENT BUT WISHES TO CONTINUE PAYING INTO THE PROGRAM, SUCH PARTICIPANT MAY RESUME PAYMENTS CALCULATED UNDER A NEW SCHEDULE BASED UPON THE ELIGIBLE CHILD'S CURRENT AGE AND THE CURRENT TOTAL COST OF EDUCATION.

(6) DEATH OF ELIGIBLE CHILD. IN THE EVENT OF THE DEATH OF AN ENROLLED ELIGIBLE CHILD, THE PARTICIPANT MAY WITHDRAW THE TOTAL BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND OR MAY ELECT TO HAVE A SCHOLARSHIP IN THE AMOUNT OF SUCH TOTAL BALANCE AWARDED TO ANOTHER STUDENT IN THE NAME OF SUCH DECEASED ELIGIBLE CHILD, UPON SUBMISSION OF A DEATH CERTIFICATE AND BASED UPON RULES AND REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

4. THE COMPTROLLER OR HIS OR HER DESIGNEE, IN CONSULTATION WITH THE SUNY CHANCELLOR OR HIS OR HER DESIGNEE AND THE CUNY CHANCELLOR OR HIS OR HER DESIGNEE, SHALL PROMULGATE ALL NECESSARY RULES AND REGULATIONS FOR THE SUCCESSFUL IMPLEMENTATION OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL INCLUDE PROVISIONS TO ADDRESS AN ELIGIBLE CHILD'S ELIGIBILITY FOR TUITION ASSISTANCE PROGRAM AWARDS OR ANY OTHER SCHOLARSHIPS, GRANTS OR AWARDS, TO ENSURE THAT THE VALUE OF SUCH AWARDS ARE REFUNDED TO THAT PARTICIPANT OR ELIGIBLE CHILD.

S 2. The state finance law is amended by adding a new section 99-v to read as follows:

S 99-V. NEW YORK STATE PRE-PAY TUITION FUND. 1. THERE IS HEREBY ESTABLISHED WITHIN THE CUSTODY OF THE STATE COMPTROLLER, OR HIS OR HER DESIGNEE, IN CONSULTATION WITH THE SUNY CHANCELLOR OR HIS OR HER DESIGNEE AND THE CUNY CHANCELLOR OR HIS OR HER DESIGNEE, A NEW FUND TO BE KNOWN AS THE NEW YORK STATE PRE-PAY TUITION FUND.

2. ALL MONIES RECEIVED PURSUANT TO THE NEW YORK STATE PRE-PAY TUITION PROGRAM SHALL BE DEPOSITED INTO THIS FUND AND SHALL BE MANAGED PURSUANT TO SECTION THREE HUNDRED FIFTY-FIVE-D OF THE EDUCATION LAW.

3. ALL NECESSARY RULES AND REGULATIONS FOR THE SUCCESSFUL ADMINISTRATION, INVESTMENT AND MANAGEMENT OF SUCH FUND SHALL BE PROMULGATED BY THE STATE COMPTROLLER OR HIS OR HER DESIGNEE IN CONSULTATION WITH THE SUNY CHANCELLOR OR HIS OR HER DESIGNEE OR THE CUNY CHANCELLOR OR HIS OR HER DESIGNEE.

S 3. Paragraph 33 of subsection (c) of section 612 of the tax law, as added by chapter 546 of the laws of 1997, is amended to read as follows:

(33) Distributions from 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 DISTRIBUTIONS FROM THE NEW YORK STATE PRE-PAY TUITION SAVINGS PROGRAM PROVIDED FOR UNDER SECTION THREE HUNDRED FIFTY-FIVE-D OF THE EDUCATION LAW, to the extent includible in gross income for federal income tax purposes.

S 4. Nothing in this act shall be construed to guarantee acceptance into any New York state college.

S 5. This act shall take effect one year after it shall have become a law; provided however that effective immediately the New York state comptroller or his or her designee, in consultation with the chancellor of the state university of New York or his or her designee and the chancellor of the city university of New York or his or her designee, shall promulgate all necessary rules and regulations for the timely implementation of this act on or before such effective date.