STATE OF NEW YORK

1160

2017-2018 Regular Sessions

IN SENATE

January 6, 2017

Introduced by Sens. CARLUCCI, AVELLA, 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:

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

§ 355-d. "New York state pre-paid tuition plan". 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

a. "Account" or "pre-paid tuition account" shall mean an individual pre-paid tuition account established in accordance with the provisions of this section.

b. "Account owner" shall mean a person who enters into a pre-paid tuition agreement pursuant to the provisions of this article, including a person who enters into such an agreement as a fiduciary or agent on behalf of a trust, estate, partnership, association, company or corporation. The account owner may also be the designated beneficiary of the account.

c. "City university" shall mean the city university of New York.

d. "Comptroller" shall mean the state comptroller.

e. "Designated beneficiary" shall mean, with respect to an account or accounts, the individual designated as the individual whose tuition expenses are expected to be paid from the account or accounts.

f. "Eligible educational institution" shall mean any institution of higher education defined as an eligible educational institution in section 529(e)(5) of the Internal Revenue Code of 1986, as amended.

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

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g. "Financial organization" shall mean an organization authorized to do business in the state and (i) which is an authorized fiduciary to act as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time, or an insurance company; and (ii) (A) is licensed or chartered by the department of financial services, (B) is chartered by an agency of the federal government, (C) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government, or (D) is any other entity otherwise authorized to act in this state as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time.

h. "Member of family" shall mean a family member as defined in section 529 of the Internal Revenue Code of 1986, as amended.

i. "Nonqualified withdrawal" shall mean a withdrawal from an account, but shall not mean:

(i) a qualified withdrawal; (ii) a withdrawal made as the result of the death or disability of the designated beneficiary of an account; or (iii) a withdrawal made on the account of a scholarship.

j. "Plan" shall mean the New York state pre-paid tuition plan established pursuant to this section.

k. "Plan manager" shall mean a financial organization selected by the comptroller to act as a depository and manager of the plan.

l. "Qualified withdrawal" shall mean a withdrawal from an account to pay the qualified tuition expenses of the designated beneficiary.

m. "State university" shall mean the state university of New York.

n. "Tuition" shall mean any mandatory charges imposed by an eligible educational institution for attendance for an academic year as a condition of enrollment. Such term shall not include laboratory fees, room and board, or other similar fees and charges.

o. "Tuition savings agreement" shall mean an agreement between the comptroller or a financial organization and an account owner.

2. Powers and duties of the comptroller. The comptroller shall administer the plan and shall develop and implement programs for the pre-payment of undergraduate tuition, at a fixed, guaranteed level for application at any two-year or four-year eligible educational institution as defined in section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law. In addition, the comptroller shall have the power and duty to:

a. develop and implement the plan in a manner consistent with the provisions of this section through rules and regulations established in accordance with the state administrative procedure act;

b. make arrangements with the state university, city university and any eligible educational institution located within the state which chooses to participate, to fulfill obligations under pre-paid tuition contracts for two-year or four-year degree programs, including, but not limited to, payment from the plan of the then actual in-state undergraduate tuition cost on behalf of a qualified beneficiary of a pre-paid tuition contract to the institution in which such beneficiary is admitted and enrolled, and application of such benefits towards graduate-level tuition and towards tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the comptroller in his or her sole discretion. Such arrangements must include plans that allow an account owner to enter into contracts in which he or she can purchase tuition in installments

equal to the cost of semesters as a full time student, but can also include plans that would allow for the pre-payment of tuition for tuition credit hours;

c. engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

d. seek rulings and other guidance from the United States department of Treasury and the Internal Revenue Service relating to the program;

e. make changes to the plan required for the participants to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended, or any similar successor legislation;

f. charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the plan;

g. develop marketing plans and promotion material;

h. establish the methods by which the funds held in such accounts be disbursed;

i. establish the method by which funds shall be allocated to pay for administrative costs; and

j. do all things necessary and proper to carry out the purposes of this section.

3. Plan requirements. Every pre-paid tuition account shall comply with the provisions of this section.

a. A pre-paid tuition account may be opened by any person who desires to enter into a contract for pre-payment of tuition expenses at an institution of the state university, the city university or any participating eligible educational institution. An account owner may designate another person as successor owner of the account in the event of the death of the original account owner. Such person who opens an account or any successor owner shall be considered the account owner.

b. An application for such account shall be in the form prescribed by the comptroller and contain the following:

(i) the name, address and social security number or employer identification number of the account owner;

(ii) the designation of a designated beneficiary;

(iii) the name, address and social security number of the designated beneficiary; and

(iv) such other information as the comptroller may require.

c. The comptroller may establish a nominal fee for such application.

d. Any person, including the account owner, may make contributions to an account after the account is opened.

e. Contributions to accounts may be made only in cash.

f. Four years must elapse between the establishment of a pre-paid tuition account and the time the first qualified withdrawal is made for the payment of tuition expenses.

g. An account owner may withdraw all or part of the balance from an account on sixty days notice or such shorter period as may be authorized under rules governing the plan. Such rules shall include provisions that will generally enable the determination as to whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal.

h. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the comptroller.

i. An account owner may transfer all or a portion of an account to another family tuition account, the subsequent designated beneficiary of

which is a member of the family as defined in section 529 of the Internal Revenue Code of 1986, as amended.

j. The plan shall provide separate accounting for each designated beneficiary.

k. No account owner or designated beneficiary of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon.

l. Neither an account owner nor a designated beneficiary shall use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

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

(ii) Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve month period to which they relate. The statement shall identify the contributions made during a preceding twelve month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the comptroller shall require to be reported to the account owner.

(iii) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

n. (i) A local government or organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, may open and become the account owner of an account to fund scholarships for persons whose identity will be determined upon disbursement.

(ii) In the case of any account opened pursuant to paragraph a of this subdivision the requirement set forth in this subdivision that a designated beneficiary be designated when an account is opened shall not apply and each individual who receives an interest in such account as a scholarship shall be treated as a designated beneficiary with respect to such interest.

o. An annual fee may be imposed upon the account owner for the maintenance of the account.

p. The plan shall disclose the following information in writing to each account owner and prospective account owner of a pre-paid tuition account:

(i) the terms and conditions for purchasing a pre-paid tuition account;

(ii) any restrictions on the substitution of beneficiaries;

(iii) the person or entity entitled to terminate the tuition pre-payment agreement;

(iv) the period of time during which a beneficiary may receive benefits under the tuition pre-payment agreement;

(v) the terms and conditions under which money may be wholly or partially withdrawn from the plan, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(vi) the probable tax consequences associated with contributions to and distributions from accounts; and

(vii) all other right and obligations pursuant to pre-paid tuition agreements, and any other terms, conditions and provisions deemed necessary and appropriate by the comptroller pursuant to this subdivision.

q. Pre-paid tuition savings agreements shall be subject to section fourteen-c of the banking law and the "truth-in-savings" regulations promulgated thereunder.

r. Nothing in this article or in any pre-paid tuition savings agreement entered into pursuant to this article shall be construed as a guarantee by the state or any college that a beneficiary will be admitted to a college or university, or, upon admission to a college will be permitted to continue to attend or will receive a degree from a college or university.

4. State guarantee. a. Nothing in this section shall establish or be deemed to establish any obligation of the state, the comptroller or any agency or instrumentality of the state to guarantee any benefits to any account owner or designated beneficiary.

b. Notwithstanding the provisions of subdivision one of this section, in order to ensure that the plan is able to meet its obligations, the governor shall include in the budget submitted pursuant to section twenty-two of the state finance law, an appropriation sufficient for the purpose of ensuring that the plan can meet its obligations. Any sums appropriated for such purpose shall be transferred to the plan. All amounts paid into the plan pursuant to this subdivision shall constitute and be accounted for as advances by the state to the plan and, subject 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.

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

§ 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 section three hundred fifty-five-d of the education law.

2. (a) The comptroller 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 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 comptroller 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.

§ 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 section three hundred fifty-five-d 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-A of the education law.

§ 4. 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 section three hundred fifty-five-d 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 paragraph l of subdivision one of section three hundred fifty-five-d 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 paragraph i of subdivision one of section three hundred fifty-five-d 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.

§ 5. 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 section three hundred fifty-five-d** of the education law, to the extent not deductible or eligible for credit for federal income tax purposes, provided, however, the exclusion provided for in this paragraph shall not exceed [~~five~~] **ten** thousand dollars for an individual or head of household, and for married couples who file joint tax returns, shall not exceed [~~ten~~] **twenty** thousand dollars; provided, further, that such exclusion shall be available only to the account owner and not to any other person.

(33) Distributions from a family tuition account established under the New York state college choice tuition savings program provided for under article fourteen-A**, or from a pre-paid tuition account pursuant to section three hundred fifty-five-d** of the education law, to the extent includible in gross income for federal income tax purposes.

§ 6. This act shall take effect immediately and shall apply to taxable years commencing after December 31, 2017.