

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:

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

3 § 355-d. "New York state pre-paid tuition plan". 1. Definitions. For
4 the purposes of this section, the following terms shall have the follow-
5 ing meanings:

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

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

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

16 d. "Comptroller" shall mean the state comptroller.

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

20 f. "Eligible educational institution" shall mean any institution of
21 higher education defined as an eligible educational institution in
22 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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1 g. "Financial organization" shall mean an organization authorized to
2 do business in the state and (i) which is an authorized fiduciary to act
3 as a trustee pursuant to the provisions of an act of congress entitled
4 "Employee Retirement Income Security Act of 1974" as such provisions may
5 be amended from time to time, or an insurance company; and (ii) (A) is
6 licensed or chartered by the department of financial services, (B) is
7 chartered by an agency of the federal government, (C) is subject to the
8 jurisdiction and regulation of the securities and exchange commission of
9 the federal government, or (D) is any other entity otherwise authorized
10 to act in this state as a trustee pursuant to the provisions of an act
11 of congress entitled "Employee Retirement Income Security Act of 1974"
12 as such provisions may be amended from time to time.

13 h. "Member of family" shall mean a family member as defined in section
14 529 of the Internal Revenue Code of 1986, as amended.

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

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

20 j. "Plan" shall mean the New York state pre-paid tuition plan estab-
21 lished pursuant to this section.

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

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

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

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

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

33 2. Powers and duties of the comptroller. The comptroller shall admin-
34 ister the plan and shall develop and implement programs for the pre-pay-
35 ment of undergraduate tuition, at a fixed, guaranteed level for applica-
36 tion at any two-year or four-year eligible educational institution as
37 defined in section 529 of the Internal Revenue Code of 1986, as amended,
38 or other applicable federal law. In addition, the comptroller shall have
39 the power and duty to:

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

43 b. make arrangements with the state university, city university and
44 any eligible educational institution located within the state which
45 chooses to participate, to fulfill obligations under pre-paid tuition
46 contracts for two-year or four-year degree programs, including, but not
47 limited to, payment from the plan of the then actual in-state undergrad-
48 uate tuition cost on behalf of a qualified beneficiary of a pre-paid
49 tuition contract to the institution in which such beneficiary is admit-
50 ted and enrolled, and application of such benefits towards graduate-lev-
51 el tuition and towards tuition costs at such eligible educational insti-
52 tutions, as that term is defined in 26 U.S.C. § 529 or any other
53 applicable section of the Internal Revenue Code of 1986, as amended, as
54 determined by the comptroller in his or her sole discretion. Such
55 arrangements must include plans that allow an account owner to enter
56 into contracts in which he or she can purchase tuition in installments

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

4 c. engage the services of consultants on a contract basis for render-
5 ing professional and technical assistance and advice;

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

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

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

15 g. develop marketing plans and promotion material;

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

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

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

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

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

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

33 (i) the name, address and social security number or employer identifi-
34 cation number of the account owner;

35 (ii) the designation of a designated beneficiary;

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

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

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

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

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

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

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

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

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

1 which is a member of the family as defined in section 529 of the Inter-
2 nal Revenue Code of 1986, as amended.

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

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

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

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

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

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

26 n. (i) A local government or organization described in section
27 501(c)(3) of the Internal Revenue Code of 1986, as amended, may open and
28 become the account owner of an account to fund scholarships for persons
29 whose identity will be determined upon disbursement.

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

36 o. An annual fee may be imposed upon the account owner for the mainte-
37 nance of the account.

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

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

43 (ii) any restrictions on the substitution of beneficiaries;

44 (iii) the person or entity entitled to terminate the tuition pre-pay-
45 ment agreement;

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

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

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

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

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

4 r. Nothing in this article or in any pre-paid tuition savings agree-
5 ment entered into pursuant to this article shall be construed as a guar-
6 antee by the state or any college that a beneficiary will be admitted to
7 a college or university, or, upon admission to a college will be permit-
8 ted to continue to attend or will receive a degree from a college or
9 university.

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

14 b. Notwithstanding the provisions of subdivision one of this section,
15 in order to ensure that the plan is able to meet its obligations, the
16 governor shall include in the budget submitted pursuant to section twen-
17 ty-two of the state finance law, an appropriation sufficient for the
18 purpose of ensuring that the plan can meet its obligations. Any sums
19 appropriated for such purpose shall be transferred to the plan. All
20 amounts paid into the plan pursuant to this subdivision shall constitute
21 and be accounted for as advances by the state to the plan and, subject
22 to the rights of the plan's contract holders, shall be repaid to the
23 state without interest from available operating revenue of the plan in
24 excess of amounts required for the payment of the obligations of the
25 plan. As used in this section, "obligations of the plan" means amounts
26 required for the payment of contract benefits or other obligations of
27 the plan, the maintenance of the plan, and operating expenses for the
28 current fiscal year.

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

31 § 78-c. New York state pre-paid tuition plan fund. 1. There is hereby
32 established in the sole custody of the state comptroller a special fund
33 to be known as the New York state pre-paid tuition plan fund. All
34 payments from such fund shall be made in accordance with section three
35 hundred fifty-five-d of the education law.

36 2. (a) The comptroller shall invest the assets of the fund in invest-
37 ments authorized by article four-A of the retirement and social security
38 law, provided however, that:

39 (i) the provisions of paragraph (a) of subdivision two of section one
40 hundred seventy-seven of the retirement and social security law shall
41 not apply except for subparagraph (ii) of such paragraph; and (ii)
42 notwithstanding the provisions of subdivision seven of section one
43 hundred seventy-seven of the retirement and social security law or any
44 other law to the contrary, the assets of the fund may be invested in any
45 funding agreement issued in accordance with section three thousand two
46 hundred twenty-two of the insurance law by a domestic life insurance
47 company or a foreign life insurance company doing business in this
48 state, subject to the following:

49 (1) such a funding agreement may provide for a guaranteed minimum rate
50 of return;

51 (2) such a funding agreement may be allocated as either a separate
52 account or a general account of the issuer, as the comptroller may
53 decide;

54 (3) total investments of the fund pursuant to this paragraph in any
55 funding agreements issued by a single life insurance company which are

1 allocated as a general account of the issuer shall not, in the aggregate,
2 exceed three hundred fifty million dollars; and

3 (4) no assets of the fund shall be invested in any such funding agreement
4 unless, at the time of such investment, the general obligations or
5 financial strength of the issuer have received either the highest or
6 second highest rating by two nationally recognized rating services or by
7 one nationally recognized rating service in the event that only one such
8 service rates such obligations.

9 (b) Fund assets shall be kept separate and shall not be commingled
10 with other assets. The comptroller may enter into contracts to provide
11 for investment advice and management, custodial services and other
12 professional services for the administration and investment of the plan.
13 Administrative fees, costs and expenses, including investment fees and
14 expenses, shall be paid from the assets of the fund.

15 3. The comptroller shall provide for the administration of the trust
16 fund, including maintaining participant records and accounts, and
17 providing annual audited reports. The comptroller may enter into
18 contracts to provide administrative services and reporting.

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

21 (p) Exemption for New York state pre-paid tuition plan monies. Monies
22 in an account created pursuant to section three hundred fifty-five-d of
23 the education law are exempt from application to the satisfaction of a
24 money judgment as follows:

25 1. one hundred percent of monies in an account in connection with a
26 pre-paid tuition plan established pursuant to such article is exempt;
27 and

28 2. one hundred percent of monies in an account is exempt where the
29 judgment debtor is the account owner or designated beneficiary of such
30 account.

31 For the purposes of this subdivision, the terms "account owner" and
32 "designated beneficiary" shall have the meanings ascribed to them in
33 article fourteen-A of the education law.

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

37 (34) (A) Excess distributions received during the taxable year by a
38 distributee of a family tuition account established under the New York
39 state college choice tuition savings program provided for under article
40 fourteen-A of the education law, or of a pre-paid tuition account estab-
41 lished pursuant to section three hundred fifty-five-d of the education
42 law, to the extent such excess distributions are deemed attributable to
43 deductible contributions under paragraph thirty-two of subsection (c) of
44 this section.

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

47 (I) qualified withdrawals within the meaning of subdivision nine of
48 section six hundred ninety-five-b or paragraph l of subdivision one of
49 section three hundred fifty-five-d of the education law;

50 (II) withdrawals made as a result of the death or disability of the
51 designated beneficiary within the meaning of subdivision ten of section
52 six hundred ninety-five-b or paragraph i of subdivision one of section
53 three hundred fifty-five-d of such law; or

54 (III) transfers described in paragraph b of subdivision six of section
55 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.