

# STATE OF NEW YORK

7783--A

## IN SENATE

February 23, 2018

Introduced by Sens. GOLDEN, O'MARA -- read twice and ordered printed,  
and when printed to be committed to the Committee on Higher Education  
-- committee discharged, bill amended, ordered reprinted as amended  
and recommitted to said committee

AN ACT to amend the education law, the tax law, the state finance law,  
the mental hygiene law and the civil practice law and rules, in  
relation to expanding the New York state college choice tuition  
savings program to include costs of elementary and secondary education

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The article heading of article 14-A of the education law,  
2 as added by chapter 546 of the laws of 1997, is amended to read as  
3 follows:

4 ARTICLE 14-A  
5 NEW YORK STATE  
6 [~~COLLEGE~~] EDUCATION CHOICE TUITION SAVINGS PROGRAM

7 § 2. Section 695 of the education law, as added by chapter 546 of the  
8 laws of 1997, is amended to read as follows:

9 § 695. Program established. There is hereby established the [~~college~~]  
10 education choice tuition savings program and such program shall be known  
11 and may be cited as the "New York state [~~college~~] education choice  
12 tuition savings program".

13 § 3. Subdivision 5 of section 695-b of the education law, as amended  
14 by chapter 535 of the laws of 2000, is amended to read as follows:

15 5. "Eligible educational institution" shall mean any institution of  
16 higher education defined as an eligible educational institution in  
17 section 529(e)(5) of the Internal Revenue Code of 1986, as amended, and  
18 any elementary or secondary school for which tuition expenses are  
19 included within the definition of the term qualified higher education  
20 expenses in section 529(e)(3) of the Internal Revenue Code of 1986, as  
21 amended.

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

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§ 4. Subdivision 10 of section 695-e of the education law, as amended by chapter 593 of the laws of 2003, is amended to read as follows:

10. The comptroller shall promulgate rules or regulations to prevent contributions on behalf of a designated beneficiary in excess of an amount that would cause the aggregate account balance for all accounts for a designated beneficiary to exceed a maximum account balance, as established from time to time by the comptroller and the corporation on the basis of nonpublic elementary and secondary tuition costs and the higher education costs in the state, with adequate safeguards to prevent more contributions than necessary to provide for the qualified higher education costs of the beneficiary, as required to maintain the program as a "qualified tuition program" under section 529 of the Internal Revenue Code of 1986, as amended.

§ 5. Section 695-e of the education law is amended by adding a new subdivision 17 to read as follows:

17. Nothing in this article or in any tuition savings agreement entered into pursuant to this article shall be construed as a guarantee by the state or any elementary or secondary school that a beneficiary will be admitted to any elementary or secondary school, or, upon admission to an elementary or secondary school will be permitted to continue to attend such elementary or secondary school.

§ 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, 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]~~ education choice tuition savings program provided for under article fourteen-A 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 thousand dollars for an individual or head of household, and for married couples who file joint tax returns, shall not exceed ten 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]~~ education choice tuition savings program provided for under article fourteen-A of the education law, to the extent includible in gross income for federal income tax purposes.

§ 7. The section heading and subdivisions 1 and 2 of section 78 of the state finance law, as added by chapter 546 of the laws of 1997, are amended to read as follows:

New York state ~~[college]~~ education choice tuition savings program trust 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 ~~[college]~~ education choice tuition savings program trust fund. All payments from such fund shall be made in accordance with article fourteen-A of the education law and the memorandum of understanding entered into pursuant thereto on the audit of the state comptroller.

2. The fund shall be a trust fund and shall consist of a trust account and an operating account. The trust account shall include amounts received by the New York state ~~[college]~~ education choice tuition savings program pursuant to tuition savings agreements, administrative charges, fees, and all other amounts received by the program from other sources, and interest and investment income earned by the trust fund. The comptroller shall, from time to time, make transfers from the trust

1 account to the operating account for the immediate payment of obli-  
2 gations under tuition savings agreements, operating expenses and admin-  
3 istrative costs of the New York state [~~college~~] education choice tuition  
4 savings program. Administrative costs shall be paid out of the operating  
5 account according to the terms and conditions established pursuant to  
6 the provisions of section six hundred ninety-five-c of the education  
7 law.

8 § 8. Subparagraph (A) of paragraph 34 of subsection (b) of section 612  
9 of the tax law, as amended by chapter 535 of the laws of 2000, is  
10 amended to read as follows:

11 (A) Excess distributions received during the taxable year by a distri-  
12 butee of a family tuition account established under the New York state  
13 [~~college~~] education choice tuition savings program provided for under  
14 article fourteen-A of the education law, to the extent such excess  
15 distributions are deemed attributable to deductible contributions under  
16 paragraph thirty-two of subsection (c) of this section.

17 § 9. Paragraph 3 of subsection (d) of section 658 of the tax law, as  
18 added by chapter 546 of the laws of 1997, is amended to read as follows:

19 (3) The commissioner may by regulation or instruction require the  
20 filing of a report annually by the comptroller or program manager of the  
21 New York state [~~college~~] education choice tuition savings program, or  
22 their designee, setting forth the names and identification numbers of  
23 account owners, designated beneficiaries and distributees of family  
24 tuition accounts, the amounts contributed to such accounts, the amounts  
25 distributed from such accounts and the nature of such distributions as  
26 qualified withdrawals or as withdrawals other than qualified with-  
27 draws, and any such other information as the commissioner may require  
28 regarding the taxation under this article of amounts contributed to or  
29 withdrawn from such accounts. The commissioner may require that any such  
30 report also be made to the account owner, designated beneficiary or  
31 distributee of any such account.

32 § 10. Subdivision 3-a of section 84.05 of the mental hygiene law, as  
33 added by chapter 149 of the laws of 2016, is amended to read as follows:

34 3-a. Notwithstanding the provisions of subdivision three of this  
35 section, the comptroller may, in his or her discretion, enter into a  
36 contract with the existing third party administrator of the [~~NYS~~  
37 ~~college~~] New York state education choice tuition savings program for the  
38 purpose of administering the NY ABLE savings account program and provid-  
39 ing account depositories and managers. The term of such contract shall  
40 expire on the same date as the contract for the administration of the  
41 [~~NYS—college~~] New York state education choice tuition savings program  
42 expires. Following such expiration, the comptroller may, in his or her  
43 discretion, solicit proposals for the purpose of administering the NY  
44 ABLE savings account program and solicit proposals for the purpose of  
45 administering the [~~NYS—college~~] New York state education choice tuition  
46 savings program jointly or separately.

47 § 11. The opening paragraph of subdivision (j) of section 5205 of the  
48 civil practice law and rules, as added by chapter 546 of the laws of  
49 1997, is amended to read as follows:

50 Exemption for New York state [~~college~~] education choice tuition  
51 savings program trust fund payment monies. Monies in an account created  
52 pursuant to article fourteen-A of the education law are exempt from  
53 application to the satisfaction of a money judgment as follows:

54 § 12. This act shall take effect immediately and shall apply to  
55 contributions and distributions made on and after January 1, 2018.