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 Assembly, do enact as follows:

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

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

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

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

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

5. "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**, and any elementary or secondary school for which tuition expenses are included within the definition of the term qualified higher education expenses in section 529(e)(3) 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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§ 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

account to the operating account for the immediate payment of obligations under tuition savings agreements, operating expenses and administrative costs of the New York state [~~college~~] **education** choice tuition savings program. Administrative costs shall be paid out of the operating account according to the terms and conditions established pursuant to the provisions of section six hundred ninety-five-c of the education law.

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

(A) Excess distributions received during the taxable year by a distributee of 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 such excess distributions are deemed attributable to deductible contributions under paragraph thirty-two of subsection (c) of this section.

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

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

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

3-a. Notwithstanding the provisions of subdivision three of this section, the comptroller may, in his or her discretion, enter into a contract with the existing third party administrator of the [~~NYS college~~] **New York state education** choice tuition savings program for the purpose of administering the NY ABLE savings account program and providing account depositories and managers. The term of such contract shall expire on the same date as the contract for the administration of the [~~NYS college~~] **New York state education** choice tuition savings program expires. Following such expiration, the comptroller may, in his or her discretion, solicit proposals for the purpose of administering the NY ABLE savings account program and solicit proposals for the purpose of administering the [~~NYS college~~] **New York state education** choice tuition savings program jointly or separately.

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

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

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