

CHAPTER 262

AN ACT establishing a Prepaid Higher Education Expense Program, amending and supplementing Title 18A of the New Jersey Statutes and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:71B-64 Short title.

1. Sections 1 through 17 of this act shall be known and may be cited as the "New Jersey Prepaid Higher Education Expense Program Act of 2001."

C.18A:71B-65 Findings, declarations relative to Prepaid Higher Education Expense Program.

2. The Legislature finds and declares: that educational opportunity at the college and university level is a critical State interest which is linked to the needs of the State to ensure a well-educated work force; that educational opportunity is best ensured through the provision of institutions of higher education which are geographically and financially accessible; that it is in the best interests of this State to adopt and foster mechanisms which will encourage its citizens to engage in the timely financial planning which is necessary to guarantee that students will have the financial resources necessary to pursue a higher education given the annually escalating level of resources which such attendance requires; and that one such mechanism which has proven successful in some other states is the establishment of a program through which a portion of the costs associated with attendance at institutions of higher education may be paid in advance and fixed at a guaranteed level for the duration of undergraduate enrollment.

C.18A:71B-66 Definitions relative to Prepaid Higher Education Expense Program.

3. As used in sections 1 through 17 of this act:

"Advance payment contract" means a contract entered into by the board and a purchaser pursuant to the provisions of this act;

"Board" means the Prepaid Higher Education Expense Board established pursuant to section 6 of this act;

"Eligible independent institution of higher education" means those institutions of higher education incorporated and located in this State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey and whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529. "Eligible independent institution of higher education" shall include a proprietary institution if expenses for tuition at the institution would be considered qualified higher education expenses under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree granting programs licensed or approved by the Commission on Higher Education or for other proprietary institutions as determined by the board. "Eligible independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion;

"Fund" means the Prepaid Higher Education Expense Trust Fund established pursuant to section 5 of this act;

"Institution of higher education" means an eligible educational institution as defined in or for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;

"Program" means the New Jersey Prepaid Higher Education Expense Program established pursuant to section 4 of this act;

"Public institution of higher education" means Rutgers, The State University, the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey Institute of Technology, the University of Medicine and Dentistry of New Jersey, the county colleges and any other public university or college now or hereafter established or authorized by State law. A public institution of higher education is an institution whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

"Purchaser" means a person who makes or is obligated to make payments in accordance with an advance payment contract;

"Qualified beneficiary" means: a. a resident of this State at the time a purchaser enters into an advance payment contract on behalf of the resident; or b. a nonresident who is the child of a noncustodial parent who is a resident of the State at the time that the noncustodial parent enters into an advance payment contract on behalf of the child;

"Tuition" means the charges imposed by an institution of higher education for enrollment at the institution. The Prepaid Higher Education Expense Board shall determine whether mandatory fees charged by institutions of higher education shall be included in the definition of tuition.

C.18A:71B-67 New Jersey Prepaid Higher Education Expense Program.

4. a. There is established the New Jersey Prepaid Higher Education Expense Program to provide a means for payment of the costs of tuition in advance of enrollment at a public institution of higher education. Moneys remitted in accordance with advance payment contracts shall be combined and invested in a manner that is intended to yield sufficient interest to generate the difference between the prepaid amount and the average in-state tuition costs at public institutions of higher education in the State at the time that the benefits are exercised. The program shall pay to the public institution of higher education at which the qualified beneficiary is enrolled an amount equal to the institution's tuition rate at the time the benefits are exercised.

b. The program shall be administered by the Prepaid Higher Education Expense Board established pursuant to section 6 of this act.

C.18A:71B-68 Prepaid Higher Education Expense Trust Fund.

5. a. There is created within the Prepaid Higher Education Expense Board the Prepaid Higher Education Expense Trust Fund. The fund shall consist of State appropriations, moneys acquired from other governmental or private sources, and moneys remitted in accordance with advance payment contracts. Dividends, interest, and gains accruing to the fund shall increase the total funds available for the program.

b. Any funds associated with contracts for which refunds are due, but have not been claimed, shall increase the total funds available for the program. However, the board shall establish procedures for notifying purchasers of any unclaimed refund and shall establish a time period after which a refund may not be claimed.

c. Any balance contained in the fund at the end of a fiscal year shall remain therein and shall be available for carrying out the purposes of the program.

d. The assets of the fund shall be maintained, invested, and expended solely for the purposes of this act and shall not be loaned, transferred, or otherwise used by the State for any purpose other than the purposes of this act. This subsection shall not be construed to prohibit the board from investing in, by purchase or otherwise, bonds, notes or other obligations of the State or an agency or instrumentality of the State.

e. Unless otherwise specified by the board, assets of the fund shall be expended in the following order of priority:

(1) to make payments to institutions of higher education on behalf of qualified beneficiaries;

(2) to make refunds upon cancellation of advance payment contracts; and

(3) to pay the costs of program administration and operations.

f. The board shall administer the fund in a manner that is sufficiently actuarially sound to defray the obligations of the program. The board shall annually evaluate or cause to be evaluated the actuarial soundness of the fund. If the board determines a need for additional assets in order to preserve actuarial soundness, the board may adjust the terms of subsequent advance payment contracts to ensure soundness.

g. If the board finds that a surplus in the fund exists, the board may compensate purchasers of advance payment contracts in a manner that the board determines to be appropriate.

C.18A:71B-69 Prepaid Higher Education Expense Board.

6. a. The Prepaid Higher Education Expense Board is established as a body corporate and politic in the Executive Branch of State Government and for the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the board is allocated in, but not of, the Department of State. Notwithstanding this allocation, the board shall be independent of any supervision or control by the department or by any board or officer thereof.

b. The board shall consist of 11 members, including the State Treasurer or a designee, the executive director of the Commission on Higher Education or a designee, the executive director of the Higher Education Student Assistance Authority or a designee, the chair of the New Jersey Presidents' Council or a designee; and seven members appointed by the Governor without regard for political affiliation, one upon the recommendation of the Speaker of the General Assembly, one upon the recommendation of the Minority Leader of the General Assembly, one upon the recommendation of the President of the Senate, and one upon the recommendation of the Minority Leader of the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management or investment management. Members appointed by the Governor shall serve terms of three years, except that in making the initial appointments, the Governor shall appoint two members to serve for one year, two members to serve for two years, and three members to serve for three years. Any member appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve until a successor qualifies. Members of the board shall serve without compensation but shall be reimbursed for any necessary expenses incurred in the performance of their duties.

c. The Governor shall appoint a member of the board to serve as the initial chair of the board. Thereafter, the board shall elect a chair annually. The board shall annually elect a board member to serve as vice-chair and shall designate a secretary-treasurer who need not be a member of the board. The secretary-treasurer shall keep a record of the proceedings of the board and shall be the custodian of all printed material filed with or by the board and of its official seal. Notwithstanding the existence of vacancies on the board, a majority of the members shall constitute a quorum. The board shall take no official action in the absence of a quorum. The board shall meet, at a minimum, on a quarterly basis at the call of the chair.

d. Neither the members of the board, nor any officer or employee of the board shall be liable personally for the debts, liabilities or obligations of the program established pursuant to this act.

C.18A:71B-70 Powers of the board.

7. The board shall have the powers necessary or proper to carry out the provisions of this act, including, but not limited to, the power to:

a. appoint an executive director to serve as the chief administrative and operational officer of the board and to perform other duties assigned by the board;

b. adopt an official seal and alter the same at pleasure;

c. sue and be sued in its own name;

d. make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.);

e. purchase, without advertising for bids or after having rejected all bids obtained pursuant to advertising therefor, any materials, supplies, goods, services or equipment pursuant to a contract or contracts for such materials, supplies, goods, services or equipment entered into on behalf of the State by the Division of Purchase and Property;

f. establish agreements or other transactions with federal, State, and local agencies, including institutions of higher education;

g. invest funds not required for immediate disbursement;

h. hold, buy, and sell any instruments, obligations, securities, and property determined appropriate by the board;

i. employ personnel, including financial and computer experts, legal counsel, accountants, managers and auditors, as may be necessary; to fix their compensation; and to promote and discharge the employees and agents; all without regard to the provisions of Title 11A of the New Jersey Statutes;

- j. solicit and accept gifts, grants, loans, and other aids from any source or participate in any other way in any government program to carry out the purposes of this act;
- k. require a reasonable length of State residence for qualified beneficiaries, as appropriate;
- l. reasonably restrict the number of participants in the county college plan and the university plan according to criteria developed by the board. A person denied participation solely on the basis of this restriction shall be granted priority for participation during the succeeding year;
- m. segregate contributions and payments to the fund into various accounts;
- n. establish reasonable administrative fees in connection with any transaction and impose reasonable penalties, including default, for delinquent payments or for entering into an advance payment contract on a fraudulent basis;
- o. procure insurance against any loss in connection with the property, assets and activities of the fund or the board;
- p. provide for the receipt of contributions in lump sums or installment payments;
- q. impose reasonable limits on the length of time within which a qualified beneficiary shall be required to begin to exercise benefits under the program. The board shall also determine whether to impose limits on the total amount of time that the qualified beneficiary is permitted to exercise the benefits under the program ;
- r. delineate the terms under which payments may be withdrawn from the fund and impose reasonable fees and charges for withdrawals;
- s. define for the purposes of this act the maximum number of credit hours which may be purchased under the program for an associate degree; the maximum number of credit hours which may be purchased under the program for a baccalaureate degree; the average current and projected tuition within the county college system and the average current and projected tuition of the four-year public institutions of higher education utilized to limit the contractual obligations of the board to qualified beneficiaries;
- t. adopt rules and regulations to implement this act; and
- u. take all actions required so that the program is treated as a qualified State tuition program under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

C.18A:71B-71 Establishment of comprehensive investment plan, administration of program annual report.

8. a. The board, acting with the approval of the State Investment Council in the Division of Investment, shall establish a comprehensive investment plan for the purposes of this act and annually review the plan to assure that the program remains actuarially sound. The comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of the fund. The board may place assets of the fund in savings accounts or use the funds to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness or other investment products, pursuant to the comprehensive investment plan and in such proportions as may be designated or approved under that plan. The board shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89). The insurance, annuity, savings or investment products shall be underwritten and offered in compliance with the applicable federal and State laws and regulations and by persons who are duly authorized by applicable federal and State authorities.

b. The board may delegate responsibility for administration of the program to a person the board determines to be qualified. Directly or through the person, the board may contract, in accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.), with a private corporation or institution authorized to do business in this State to provide such services as may be a part of the program or as may be deemed necessary for implementation of the program, including, but not limited to, providing consolidated billing, individual and collective record keeping and accounting, asset purchase, control and safekeeping , investment management, marketing, administration, program operations, and other services deemed necessary and proper to carry out the purposes of this act. In the event that the board delegates a private entity as the investment manager, the assets of the fund shall be invested in accordance with an investment

plan approved by the State Investment Council in the Division of Investment.

The board shall determine whether the services deemed necessary and proper to carry out the purposes of this act shall be provided by a single or multiple entities.

c. The board shall annually prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the fund and a description of the financial condition of the program at the close of each fiscal year. The report shall be submitted to the Governor, the President of the Senate, the Speaker of the General Assembly, the State Treasurer, the executive director of the New Jersey Commission on Higher Education and the executive director of the Higher Education Student Assistance Authority on or before August 1 each year. In addition, the board shall make the report available to purchasers of advance payment contracts. The board shall provide to the Commission on Higher Education by August 1 each year complete advance payment contract sales information, including projected higher education enrollments of qualified beneficiaries.

d. The accounts of the funds shall be subject to annual audits by the State Auditor or a designee. In addition, the board shall commission an annual independent audit of the program. The results of the independent audit shall be provided to the Governor, the President of the Senate, the Speaker of the General Assembly, the State Treasurer, the executive director of the New Jersey Commission on Higher Education and the executive director of the Higher Education Student Assistance Authority. If the board delegates responsibility for the administration of the comprehensive investment plan pursuant to subsection b. of this section, the cost of the independent audit shall be borne by that person.

e. The board may make available insurance coverage written exclusively for the purpose of protecting advance payment contracts, and the purchasers or beneficiaries thereof, which may be issued in the form of a group term life policy to purchasers of advance payment contracts.

f. Materials produced for the purpose of marketing the program shall be submitted to the board for review and approval. Marketing materials shall not be made available or distributed to the public prior to the materials being approved by the board. An institution of higher education may distribute marketing materials produced for the program. The State and the board shall not be liable for misrepresentation of the program by a marketing agent.

g. Statements, reports on distributions and information returns relating to accounts shall be prepared, distributed, and filed to the extent required by section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

C.18A:71B-72 Development of advance payment contract, terms.

9. a. The board shall develop an advance payment contract with the assistance of the Office of the Attorney General. An advance payment contract shall be exempt from the provisions of Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title 17B of the New Jersey Statutes. The contents of the contract shall include, but not be limited to, the following:

- (1) the amount of the payments and the number of payments required from a purchaser;
- (2) the terms and conditions under which purchasers are required to remit payments, including, but not limited to, the date or dates upon which each payment is due;
- (3) provisions for late payment charges and for default;
- (4) provisions for penalty fees for withdrawals from the fund;
- (5) the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- (6) the name of any person who may cancel the contract. The terms of the contract shall specify whether the contract may be canceled by the purchaser, the qualified beneficiary, a specific designated person or any combination of these persons;
- (7) the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation of the contract pursuant to those terms and conditions, and the method for determining the amount of refund;
- (8) the time limitations, if any, within which the qualified beneficiary is required to claim benefits through the program. If time limitations are included in the contract, the time

expended by a qualified beneficiary as an active duty member of any of the armed services of the United States shall be added to the period of time permitted to exercise the benefits;

(9) the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and

(10) other terms and conditions deemed by the board to be necessary or proper.

b. In addition to the provisions of subsection a. of this section an advance payment contract shall include the following:

(1) the number of credit hours contracted by the purchaser;

(2) the plan toward which the credit hours shall be applied;

(3) the assumption of a contractual obligation by the board to the qualified beneficiary to provide for a specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate .

C.18A:71B-73 Availability of advance payment contracts; plans.

10. a. At a minimum, the board shall make advance payment contracts available for two independent plans to be known as the county college plan and the university plan.

(1) Through the county college plan, the advance payment contract shall provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of credit hours which may be purchased under the program for an associate degree. The cost of participation in the county college plan shall be based primarily on the average current and projected tuition within the county college system and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by the qualified beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary chooses to attend a four-year public institution of higher education, the qualified beneficiary may convert the maximum number of credit hours which may be purchased under the program for an associate degree from a county college plan to a university plan. Each qualified beneficiary shall be classified as an in-county resident for tuition purposes regardless of his actual legal residence during the period in which benefits under the program are being utilized.

(2) Through the university plan, the advance payment contract shall provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of credit hours which may be purchased under the program for a baccalaureate degree. The cost of participation in the university plan shall be based primarily on the average current and projected tuition of the four-year public institutions of higher education and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by the beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary fails to be admitted to a four-year public institution of higher education or chooses to attend a county college, the qualified beneficiary may convert the maximum number of credit hours which may be purchased under the program for an associate degree from a university plan to a county college plan and may retain the remaining credit hours in the university plan or may request a refund for prepaid credit hours in excess of the maximum number of credit hours which may be purchased under the program for an associate degree. A refund may also be requested for the difference in the cost of credit hours under the university plan and the county college plan for the number of credit hours converted to the county college plan. Each qualified beneficiary shall be classified as a resident for tuition purposes regardless of his actual legal residence during the period in which benefits under the program are being utilized.

b. In addition to the plans required pursuant to subsection a. of this section, the board may make advance payment contracts available for other plans, such as the county college plus university plan whereby the advance payment contract would provide tuition that would allow a qualified beneficiary to attend a county college for an associate degree and then attend a four-

year public institution of higher education for a baccalaureate degree.

c. The board shall establish procedures for conversions between plans established under the program. The procedures shall include, but not be limited to, the conditions under which a conversion may occur and the method for calculating any refund due.

d. A qualified beneficiary may apply a county college plan or a university plan toward any eligible independent institution of higher education. The board shall transfer or cause to have transferred to the eligible independent institution of higher education designated by the qualified beneficiary an amount not to exceed the weighted average tuition purchased under the advance payment contract. In the event that the cost of tuition at the eligible independent institution of higher education is less than the weighted average tuition purchased under the advance payment contract, the amount transferred shall not exceed the actual cost of tuition. A transfer authorized pursuant to this subsection shall not exceed the number of credit hours contracted on behalf of a qualified beneficiary.

e. A qualified beneficiary may apply the benefits of an advance payment contract toward an eligible out-of-State institution of higher education. Institutional eligibility for out-of-State institutions of higher education shall be determined by the board, but in making those determinations the board shall recognize that the benefits may only be used at an out-of-State institution of higher education whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board shall transfer or cause to have transferred to the eligible out-of-State institution of higher education designated by the qualified beneficiary an amount not to exceed the weighted average tuition purchased under the advance payment contract. In the event that the cost of tuition at the eligible out-of-State institution of higher education is less than the weighted average tuition purchased under the advance payment contract, the amount transferred shall not exceed the actual cost of tuition. A transfer authorized pursuant to this subsection shall not exceed the number of credit hours contracted on behalf of a qualified beneficiary.

C.18A:71B-74 Conditions for payment of refunds.

11. a. The board shall determine the conditions under which refunds are payable under the program. Unless authorized by the board or under the provisions of this section, a refund shall not exceed the amount paid into the fund by the purchaser. A refund may exceed the amount paid into the fund in the following circumstances:

(1) if the qualified beneficiary is awarded a scholarship (or allowance or payment described in subparagraph (B) or (C) of paragraph (1) of subsection (d) of section 135 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover the benefits included in the advance payment contracts, moneys paid for the purchase of the advance payment contracts may be returned to the purchaser in enrollment period installments coinciding with the matriculation by the qualified beneficiary in amounts equal to the lesser of the original purchase price plus 5% interest compounded annually, or the weighted average tuition purchased under the advance payment contract; and

(2) in the event of the death or disability of the qualified beneficiary, moneys paid for the purchase of advance payment contracts shall be returned to the purchaser together with 5% interest compounded annually.

b. A refund shall not be authorized through an advance payment contract for any school year partially attended but not completed. For purposes of this subsection, a school year partially attended but not completed means any one enrollment period whereby the student is still enrolled at the conclusion of the official drop-add period, but withdraws before the end of the enrollment period.

c. If a qualified beneficiary does not complete a county college plan or university plan, for reasons other than specified in subsection a. of this section, the purchaser shall receive a refund of the amount paid into the fund for the remaining unattended years of the advance payment contract pursuant to rules promulgated by the board and in accordance with the provisions of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

C.18A:71B-75 Exemption from creditors.

12. Moneys paid into or out of the fund by or on behalf of a purchaser or qualified beneficiary of an advance payment contract for the purposes of financing the cost of qualified higher education expenses under the program are exempt from all claims of creditors of the purchaser or the beneficiary.

C.18A:71B-76 Remittance of payments through governmental payroll deductions.

13. The State or any State agency, county, municipality, or other political subdivision may, by contract or collective bargaining agreement, agree with any employee to remit payments toward advance payment contracts through payroll deductions made by the appropriate officer or officers of the State, State agency, county, municipality, or political subdivision. The payments shall be held and administered in accordance with this act.

C.18A:71B-77 Appropriations necessary for distributions.

14. If the investment manager is the Division of Investment in the Department of the Treasury, in order to meet the obligations of the board under this act, there shall be paid to the board for deposit in the fund, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chair of the board as necessary to provide that amount at the time of distribution. The chair shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the fund the amount aforesaid, and the sums so certified shall be appropriated and paid to the board during the then current State fiscal year.

C.18A:71B-78 Discontinuance of program.

15. In the event that the State Treasurer determines the program to be financially infeasible, the State may discontinue the provision of the program. A qualified beneficiary who has been accepted by and is enrolled or is within five years of enrollment in an institution of higher education shall be entitled to exercise the benefits for which he has contracted. All other contract holders shall receive a refund of the amount paid into the fund.

C.18A:71B-79 Admission to public colleges, guaranteed; requirements.

16. a. A qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational-educational program, based upon grades in core curriculum content subject areas as determined by the board, or who graduates in the top 15% of his high school graduating class shall be admitted to a public institution of higher education. In order to be admitted to a public institution of higher education pursuant to this section, the qualified beneficiary shall meet all of the institution's requirements for admittance. This provision shall not be construed to promise or guarantee that a qualified beneficiary shall be admitted to a particular public institution of higher education.

b. In order to effectuate the provisions of subsection a. of this section, the board, in consultation with the Commission on Higher Education, shall develop a process to assist qualified beneficiaries in applying to all public institutions of higher education.

C.18A:71B-80 Admission to particular college, continuance not guaranteed; obligation of State limited.

17. a. Nothing in this article shall be construed to guarantee that a qualified beneficiary will be admitted to a particular higher education institution or be allowed to continue enrollment at or graduate from a higher education institution after admission.

b. Nothing in this article shall establish any obligation or liability on the part of this State or any agency or instrumentality of this State with respect to any federal or State tax liability of any contributor or designated beneficiary in this program.

c. Under regulations promulgated by the board, every contract and application that may be used in connection with the program shall clearly indicate that the contract is not insured by this State, other than as set forth in sections 14 and 15 of P.L.2001, c.262 (C.18A:71B-77 and C.18A:71B-78).

18. N.J.S.18A:71B-40 is amended to read as follows:

Selection of investment manager.

18A:71B-40. a. The authority shall select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the authority shall consider the impact of fees and costs imposed by the manager or managers on yield to contributors.

b. The authority may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program.

c. The authority may provide a contributor with a choice of investment managers or investment instruments or both for the program if both of the following conditions exist:

(1) the federal Internal Revenue Service has provided guidance that providing a contributor with a choice of investment managers or instruments under a State tuition program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

(2) the authority concludes that a choice of investment managers or of investment instruments is in the best interest of contributors and will not interfere with the administration of the program.

d. the authority terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the authority shall select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the authority would not cause a program to cease to be a qualified State tuition program for the purposes of section 529 of the federal Internal Revenue Code, 26 U.S.C.s.529.

e. If the selection process provided for in this section results in an investment manager other than the Division of Investment, the authority shall provide for the orderly transfer of accounts and shall ensure that all the rights of the contributors and designated beneficiaries participating in the program as of the effective date of P.L.2001, c.262 (C.18A:71B-64 et al.), are protected.

19. N.J.S.18A:71B-44 is amended to read as follows:

Assurance of availability of principal.

18A:71B-44. a. If the investment manager is the Division of Investment in the Department of the Treasury, in order to assure the availability of principal of any amount contributed under this article, there shall be paid to the authority for deposit in the trust, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chair of the authority as necessary to provide that amount at the time of distribution. The chair shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the trust the amount aforesaid, and the sums so certified shall be appropriated and paid to the authority during the then current State fiscal year.

b. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed under this article shall be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

C.18A:71B-41.1 Exemption from claims of creditors for NJBEST accounts.

20. Moneys paid into or out of an NJBEST account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified higher education expenses under this article are exempt from all claims of creditors of the contributor or the designated beneficiary.

21. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to read as follows:

C.54A:6-25 State tuition programs, education; distributions, certain, excluded from gross income.

13. a. Gross income shall not include earnings on an education individual retirement account or a qualified State tuition program account until the earnings are distributed from the account, at which time they shall be includible in the gross income of the distributee except as provided in this section.

b. Gross income shall not include qualified distributions as defined in paragraph (3) of subsection c. of this section.

c. For purposes of this section:

(1) "Education individual retirement account" means an education retirement account as defined pursuant to paragraph (1) of subsection (b) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.530.

(2) "Qualified State tuition program account" means an account established pursuant to the "New Jersey Better Educational Savings Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.), an account established pursuant to the "New Jersey Prepaid Higher Education Expense Program," P.L.2001, c.262 (C.18A:71B-64 et seq.) or an account established pursuant to any qualified State tuition program, as defined pursuant to subsection (b) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to any such program.

(3) "Qualified distribution" means any of the following:

(a) a distribution from a qualified State tuition program account that is used for qualified higher education expenses as defined pursuant to paragraph (3) of subsection (e) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

(b) a rollover from one account to another account as described in clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of section 529 or paragraph (5) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

(c) a change in designated beneficiaries of an account as described in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of section 529 or paragraph (6) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

d. The portion of a distribution from an education individual retirement account or a qualified State tuition program account that is attributable to earnings shall be determined in accordance with the principles of section 72 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

22. There is appropriated from the General Fund to the Prepaid Higher Education Expense Board in, but not of, the Department of State \$250,000 to effectuate the provisions of this act.

23. This act shall take effect immediately.

Approved December 11, 2001.