

## CHAPTER 309

AN ACT concerning the New Jersey Better Educational Savings Trust (NJBEST) Program and amending N.J.S.18A:71B-41.

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

1. N.J.S.18A:71B-41 is amended to read as follows:

Operation of program; fees.

18A:71B-41. a. The program shall be operated as a trust through the use of accounts for designated beneficiaries. An account may be opened by any person who desires to save to pay the qualified higher education expenses of an individual by satisfying each of the following requirements:

- (1) completing an application in the form prescribed by the authority;
- (2) paying the one-time application fee established by the authority;
- (3) making the minimum contribution required by the authority for opening an account;
- (4) designating the account or accounts to be opened; and

(5) in the case of an account to which subsection a. of N.J.S.18A:71B-44 would apply, demonstrating to the satisfaction of the authority that either the contributor, if an individual, or the designated beneficiary is a New Jersey resident. The requirement of New Jersey residency for either the contributor or the designated beneficiary would not apply to an account to which subsection b. of N.J.S.18A:71B-44 would apply unless otherwise determined by the authority.

b. (Deleted by amendment, P.L.2003, c.309).

c. Contributions to accounts shall be made only in cash, as defined by the authority pursuant to regulations, in accordance with section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

d. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the authority pursuant to regulations.

e. A contributor may change the designated beneficiary of an account or rollover all or a portion of an account to another account if the change or rollover would not result in a distribution includible in gross income under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, in accordance with procedures established by the authority.

f. In the case of any nonqualified withdrawal, a penalty at a level established by the authority and sufficient to be considered a more than de minimis penalty for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be withheld and paid to the authority for use in operating and marketing the program. The authority may elect not to impose a penalty if that section ceases to include a provision requiring more than de minimis penalties for a program to qualify as a qualified State tuition program.

g. If a contributor makes a nonqualified withdrawal and a penalty amount is not withheld pursuant to subsection f. of this section or the amount withheld is less than the amount required to be withheld under that subsection, the contributor shall pay the unpaid portion of the penalty to the authority at the same time that the contributor files a State income tax return for the taxable year of the withdrawal, or if the contributor does not file a return, the unpaid portion of the penalty shall be paid on or before the due date for the filing of that income tax return.

h. Each account shall be maintained separately from each other account under the program.

i. Separate records and accounting shall be maintained for each account for each designated beneficiary.

j. A contributor to or designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings from the account, except as permitted under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

k. A contributor or a designated beneficiary shall not use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

l. The maximum contribution for any designated beneficiary shall be determined by the authority pursuant to regulations, in accordance with section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

m. 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, or regulations issued thereunder.

n. The authority may charge, impose and collect reasonable administrative fees and service charges in connection with any agreement, contract or transaction relating to the program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

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

p. A contributor, if an individual, may designate another person as a successor contributor in the event of the death of the original contributor. The person who opens the account, or any successor contributor, shall be considered the contributor as defined in N.J.S.18A:71B-36.

q. Any person may make contributions to an account, consistent with the terms established by the authority, after the account is opened.

2. This act shall take effect immediately.

Approved January 18, 2004.