

MAR 3 2004
WAYS AND MEANS

Withdrawn
3/29/04

HOUSE FILE 2429
BY KRAMER, S. OLSON,
and FREVERT

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to technical and substantive changes regarding
2 the Iowa educational savings plan trust and the establishment
3 of an additional optional program by a specified date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HI 2429

1 Section 1. Section 12D.1, Code 2003, is amended to read as
2 follows:

3 12D.1 PURPOSE AND DEFINITIONS.

4 The general assembly finds that the general welfare and
5 well-being of the state are directly related to educational
6 levels and skills of the citizens of the state, and that a
7 vital and valid public purpose is served by the creation and
8 implementation of programs which encourage and make possible
9 the attainment of higher education by the greatest number of
10 citizens of the state. The state has limited resources to
11 provide additional programs for higher education funding and
12 the continued operation and maintenance of the state's public
13 institutions of higher education and the general welfare of
14 the citizens of the state will be enhanced by establishing a
15 program which allows citizens of the state to invest money in
16 a public trust for future application to the payment of higher
17 education costs. The creation of the means of encouragement
18 for citizens to invest in such a program represents the
19 carrying out of a vital and valid public purpose. In order to
20 make available to the citizens of the state an opportunity to
21 fund future higher education needs, it is necessary that a
22 public trust be established in which moneys may be invested
23 for future educational use. ~~It is also necessary to establish~~
24 ~~an endowment fund which may be funded with public funds, among~~
25 ~~other sources, the income from which will be made available to~~
26 ~~participants in the trust to enhance their savings invested~~
27 ~~for the payment of future higher education costs.~~

28 As used in this chapter, unless the context otherwise
29 requires:

30 1. "Account balance limit" means the maximum allowable
31 aggregate balance of accounts established for the same
32 beneficiary. Account earnings, if any, are included in the
33 account balance limit.

34 2. "Administrative fund" means the administrative fund
35 established under section 12D.4.

1 3. "Beneficiary" means the individual designated by a
2 participation agreement to benefit from advance payments of
3 higher education costs on behalf of the beneficiary.

4 4. "Benefits" means the payment of higher education costs
5 on behalf of a beneficiary by the trust during the
6 beneficiary's attendance at an institution of higher
7 education.

8 ~~5. -- "Endowment-fund" means the endowment-fund established~~
9 ~~under section 12D.4.~~

10 ~~6.~~ 5. "Higher education costs" means the certified costs
11 of tuition, fees, books, supplies, and equipment required for
12 enrollment or attendance at an institution of higher
13 education. Reasonable room and board expenses, based on the
14 minimum amount applicable for the institution of higher
15 education during the period of enrollment, shall be included
16 as a higher education cost for those students enrolled on at
17 least a half-time basis. In the case of a special needs
18 beneficiary, expenses for special needs services incurred in
19 connection with enrollment or attendance at an institution of
20 higher education shall be included as a higher education cost.

21 ~~7.~~ 6. "Institution of higher education" means an
22 institution described in section 481 of the federal Higher
23 Education Act of 1965, 20 U.S.C. § 1088, which is eligible to
24 participate in the United States department of education's
25 student aid programs.

26 ~~8.~~ 7. "Internal Revenue Code" means the same as defined in
27 section 422.3.

28 ~~9.~~ 8. "Iowa educational savings plan trust" or "trust"
29 means the trust created under section 12D.2.

30 ~~10.~~ 9. "Participant" means an individual, ~~or an~~
31 individual's legal representative, who trust, or estate that
32 has entered into a participation agreement under this chapter
33 for the advance payment of higher education costs on behalf of
34 a beneficiary.

35 ~~11.~~ 10. "Participation agreement" means an agreement

1 between a participant and the trust entered into under this
2 chapter.

3 ~~±2.~~ 11. "Program fund" means the program fund established
4 under section 12D.4.

5 ~~±3.--"Refund-penalty"--means-the-amount-assessed-by-the~~
6 ~~treasurer-of-state-for-cancellation-of-a-participation~~
7 ~~agreement-which-is-not-considered-a-de-minimus-penalty~~
8 ~~pursuant-to-section-529-of-the-Internal-Revenue-Code.~~

9 ~~±4.~~ 12. "Tuition and fees" means the quarter or semester
10 charges imposed to attend an institution of higher education
11 and required as a condition of enrollment.

12 Sec. 2. Section 12D.2, subsection 4, Code 2003, is amended
13 to read as follows:

14 4. Accept any grants, gifts, legislative appropriations,
15 and other moneys from the state, any unit of federal, state,
16 or local government, or any other person, firm, partnership,
17 or corporation which the treasurer of state shall deposit into
18 the administrative fund~~7-the-endowment-fund7~~, or the program
19 fund.

20 Sec. 3. Section 12D.2, subsection 8, Code 2003, is amended
21 by striking the subsection.

22 Sec. 4. Section 12D.2, subsection 10, Code 2003, is
23 amended to read as follows:

24 10. Make payments to institutions of higher education,
25 participants, or beneficiaries, pursuant to participation
26 agreements on behalf of beneficiaries.

27 Sec. 5. Section 12D.2, subsection 11, Code 2003, is
28 amended to read as follows:

29 11. Make refunds to participants upon the termination of
30 participation agreements, and partial nonqualified
31 distributions to participants, pursuant to the provisions,
32 limitations, and restrictions set forth in this chapter.

33 Sec. 6. Section 12D.2, subsection 12, Code 2003, is
34 amended to read as follows:

35 12. Invest moneys from ~~the-endowment-fund-and~~ the program

1 fund in any investments which are determined by the treasurer
2 of state to be appropriate.

3 Sec. 7. Section 12D.3, subsection 1, paragraph a, Code
4 2003, is amended to read as follows:

5 a. Each participation agreement may require a participant
6 to agree to invest a specific amount of money in the trust for
7 a specific period of time for the benefit of a specific
8 beneficiary. A participant shall not be required to make an
9 annual contribution on behalf of a beneficiary. ~~The minimum~~
10 ~~contribution-per-beneficiary-per-year,-in-a-year-in-which-a~~
11 ~~participant-is-making-a-contribution,-shall-be-fifty-dollars.-~~
12 The maximum contribution that may be deducted for Iowa income
13 tax purposes shall not exceed two thousand dollars per
14 beneficiary per year adjusted annually to reflect increases in
15 the consumer price index. The treasurer of state shall set an
16 account balance limit to maintain compliance with section 529
17 of the Internal Revenue Code. A contribution shall not be
18 permitted to the extent it causes the aggregate balance of all
19 accounts established for the same beneficiary to exceed the
20 applicable account balance limit.

21 Sec. 8. Section 12D.3, subsections 2 and 3, Code 2003, are
22 amended by striking the subsections.

23 Sec. 9. Section 12D.4, Code 2003, is amended by striking
24 the section and inserting in lieu thereof the following:

25 12D.4 PROGRAM AND ADMINISTRATIVE FUNDS -- INVESTMENT AND
26 PAYMENTS.

27 1. a. The treasurer of state shall segregate moneys
28 received by the trust into two funds: the program fund and
29 the administrative fund.

30 b. All moneys paid by participants in connection with
31 participation agreements shall be deposited as received into
32 separate accounts within the program fund.

33 c. Contributions to the trust made by participants may
34 only be made in the form of cash.

35 d. A participant or beneficiary shall not provide

1 investment direction regarding program contributions or
2 earnings held by the trust.

3 2. Moneys accrued by participants in the program fund of
4 the trust may be used for payments to any institution of
5 higher education. Payments can be made to the institution,
6 the participant, or the beneficiary.

7 Sec. 10. Section 12D.5, Code Supplement 2003, is amended
8 by striking the section and inserting in lieu thereof the
9 following:

10 12D.5 CANCELLATION OF AGREEMENTS.

11 A participant may cancel a participation agreement at will.
12 Upon cancellation of a participation agreement, a participant
13 shall be entitled to the return of the participant's account
14 balance.

15 Sec. 11. Section 12D.6, subsection 2, Code 2003, is
16 amended to read as follows:

17 2. In the event the program is terminated prior to payment
18 of higher education costs for the beneficiary, the participant
19 is entitled to a refund of the participant's account balance.

20 ~~No-right-to-receive-investment-income-shall-exist-in-cases~~
21 ~~of-voluntary-participant-cancellation-except-as-provided-in~~
22 ~~section-12D-5-~~

23 Sec. 12. Section 12D.6, subsection 3, Code 2003, is
24 amended by striking the subsection.

25 Sec. 13. Section 12D.9, subsection 1, paragraphs d and e,
26 Code Supplement 2003, are amended to read as follows:

27 d. Pursuant to section 12D.4, subsection 1, paragraph "f"
28 "c", contributions may only be made in the form of cash.

29 e. Pursuant to section 12D.4, subsection 1, paragraph "g"
30 "d", a participant or beneficiary shall not provide investment
31 direction regarding program contributions or earnings held by
32 the trust.

33 Sec. 14. Section 12D.9, subsection 1, paragraph f, Code
34 Supplement 2003, is amended by striking the paragraph.

35 Sec. 15. Section 12D.10, subsection 1, Code 2003, is

1 amended to read as follows:

2 1. The assets of the trust~~7--including-the-program-fund-and~~
3 ~~the-endowment-fund~~7 shall at all times be preserved, invested,
4 and expended solely and only for the purposes of the trust and
5 shall be held in trust for the participants and beneficiaries.

6 Sec. 16. LEGISLATIVE INTENT. It is the intent of the
7 general assembly that the treasurer of state shall establish
8 an additional educational savings plan option, to be marketed
9 through licensed securities agents, by December 31, 2005.

10 Licensed securities agents marketing the optional program may
11 be compensated from the product distributor, fund company,
12 insurance company, or other distribution agent for their
13 activities in marketing and advising investors regarding the
14 program.

15 EXPLANATION

16 This bill makes several technical and substantive changes
17 regarding the operation of the Iowa educational savings plan
18 trust pursuant to Code chapter 12D.

19 The bill eliminates the endowment fund which is currently
20 established pursuant to Code section 12D.4, and deletes
21 references to that fund throughout Code chapter 12D. The bill
22 additionally eliminates provisions establishing a penalty
23 assessed by the treasurer of state for cancellation of a
24 participation agreement. The inclusion of penalty provisions
25 had previously been required in order for plan qualification
26 pursuant to section 529 of the Internal Revenue Code, but is
27 no longer necessary due to the incorporation of such
28 provisions in federal tax legislation. The bill further
29 eliminates age restrictions which currently limit plan
30 participation to individuals establishing an account for a
31 child prior to the child's attainment of age 18. Such
32 restrictions are not required for plan qualification pursuant
33 to section 529 of the Internal Revenue Code. Consistent with
34 the elimination of beneficiary age restrictions, the bill
35 additionally eliminates a provision providing for a refund of

1 a participant's account balance remaining in the account after
2 the 30-day period following the beneficiary's thirtieth
3 birthday.

4 The bill also adjusts current plan provisions to promote
5 clarity or increase flexibility. The bill adds a provision to
6 the definition of "higher education costs" providing that such
7 costs include, in the case of a special needs beneficiary,
8 expenses for special needs services incurred in connection
9 with enrollment or attendance at an institution of higher
10 education. The bill allows payments to be made by the
11 treasurer of state not only to institutions of higher
12 learning, as currently provided for in Code chapter 12D, but
13 also to the participant and the beneficiary of the plan. The
14 bill eliminates the current minimum contribution limit of \$50
15 per year, and deletes provisions which currently limit
16 participation to individuals, thereby authorizing
17 participation by entities such as trusts or estates.

18 Additionally, the bill provides that refunds to participants
19 made upon the termination of participation agreements can
20 include or extend to a partial nonqualified distribution.

21 The bill also provides intent language regarding the
22 establishment by the treasurer of state of an additional
23 educational savings plan option. The bill provides that the
24 additional option shall be marketed through licensed
25 securities agents, who may be compensated from the product
26 distributor, fund company, insurance company, or other
27 distribution agent for their activities in marketing and
28 advising investors regarding the program. The bill provides
29 that the additional option shall be established by December
30 31, 2005.

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