

derived fuel and allowable for inclusion shall not exceed fifty percent and only those products established as allowable pursuant to section 455D.20 shall be included in the calculation of the waste reduction goal.

Sec. 2. Section 455B.412, subsection 5, Code 2003, is amended by striking the subsection.

Sec. 3. Section 455D.20, Code 2003, is repealed.

Approved April 14, 2004

CHAPTER 1079

IOWA EDUCATIONAL SAVINGS PLAN TRUST REVISIONS

H.F. 2553

AN ACT relating to technical and substantive changes regarding the Iowa educational savings plan trust and the establishment of an additional optional program by a specified date, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

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

12D.1 PURPOSE AND DEFINITIONS.

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

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

1. "Account balance limit" means the maximum allowable aggregate balance of accounts established for the same beneficiary. Account earnings, if any, are included in the account balance limit.
2. "Administrative fund" means the administrative fund established under section 12D.4.
3. "Beneficiary" means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary.
4. "Benefits" means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education.
5. ~~"Endowment fund" means the endowment fund established under section 12D.4.~~

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

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

8. ~~7.~~ “Internal Revenue Code” means the same as defined in section 422.3.

9. ~~8.~~ “Iowa educational savings plan trust” or “trust” means the trust created under section 12D.2.

10. ~~9.~~ “Participant” means an individual, ~~or an individual’s legal representative, who trust, or estate that~~ has entered into a participation agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.

11. ~~10.~~ “Participation agreement” means an agreement between a participant and the trust entered into under this chapter.

12. ~~11.~~ “Program fund” means the program fund established under section 12D.4.

13. ~~“Refund penalty” means the amount assessed by the treasurer of state for cancellation of a participation agreement which is not considered a de minimus penalty pursuant to section 529 of the Internal Revenue Code.~~

14. ~~12.~~ “Tuition and fees” means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

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

4. Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation which the treasurer of state shall deposit into the administrative fund, ~~the endowment fund,~~ or the program fund.

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

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

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

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

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

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

12. Invest moneys from ~~the endowment fund and~~ the program fund in any investments which are determined by the treasurer of state to be appropriate.

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

a. Each participation agreement may require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. ~~The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be fifty dollars.~~ The maximum contribution that may be deducted for Iowa income tax purposes shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. The treasurer of state shall

set an account balance limit to maintain compliance with section 529 of the Internal Revenue Code. A contribution shall not be permitted to the extent it causes the aggregate balance of all accounts established for the same beneficiary to exceed the applicable account balance limit.

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

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

12D.4 PROGRAM AND ADMINISTRATIVE FUNDS — INVESTMENT AND PAYMENTS.

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

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

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

d. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

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

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

12D.5 CANCELLATION OF AGREEMENTS.

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

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

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

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

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

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

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

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

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

Sec. 15. Section 12D.10, subsection 1, Code 2003, is amended to read as follows:

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

Sec. 16. LEGISLATIVE INTENT. It is the intent of the general assembly that the treasurer of state shall establish an additional educational savings plan option, to be marketed through

licensed securities agents, by December 31, 2005. Licensed securities agents marketing the optional program may be compensated from the product distributor, fund company, insurance company, or other distribution agent for their activities in marketing and advising investors regarding the program.

Sec. 17. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 15, 2004

CHAPTER 1080

BANK COLLATERAL PLEDGED TO SECURE PUBLIC FUNDS DEPOSITS

S.F. 2119

AN ACT relating to obligations secured by collateral required to be pledged by banks to the treasurer of state in order to secure the deposit of public moneys, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 12C.22, subsection 1, paragraph b, Code 2003, is amended by striking the paragraph.

Sec. 2. Section 12C.22, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. In the event an assessment is paid by a bank to the treasurer of state pursuant to section 12C.23A, ~~or in the event that collateral pledged by the bank is liquidated pursuant to section 12C.23A, subsection 3, paragraph "e", and the proceeds are used to pay the assessment,~~ the bank is subrogated to the claim of a public funds depositor to the extent the claim is paid from funds paid by the bank ~~or proceeds of collateral pledged by the bank are used to pay the assessment.~~

Sec. 3. Section 12C.22, subsection 5, paragraph d, Code 2003, is amended to read as follows:

d. Establish procedures for ~~adding collateral, releasing collateral, and~~ substituting different collateral for collateral pledged under this section.

Sec. 4. Section 12C.23A, subsection 3, paragraph e, Code Supplement 2003, is amended to read as follows:

e. If a bank fails to pay its assessment when due, the treasurer of state shall ~~satisfy the assessment by liquidating collateral pledged by the bank upon such notice as is required by chapter 554. If the collateral pledged by the bank is inadequate to pay the assessment, the treasurer of state shall~~ make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.