

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 122

HOUSE BILL 2098

AN ACT

AMENDING SECTIONS 15-1871, 15-1874, 15-1875 AND 15-1878, ARIZONA REVISED STATUTES; RELATING TO THE FAMILY COLLEGE SAVINGS PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1871, Arizona Revised Statutes, is amended to
3 read:

4 15-1871. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Account" means an individual trust account or savings account
7 established as prescribed in this article.

8 2. "Account owner" means the person designated at the time an account
9 is opened as having the right to withdraw monies from the account before the
10 account is disbursed to or for the benefit of the designated beneficiary.

11 3. "Commission" means the commission for postsecondary education
12 established by section 15-1851.

13 4. "Committee" means the family college savings program oversight
14 committee.

15 5. "Designated beneficiary", except as provided in section 15-1875,
16 subsections ~~U~~ R and ~~V~~ S, means, with respect to an account, the person
17 designated at the time the account is opened as the person whose higher
18 education expenses are expected to be paid from the account or, if this
19 designated beneficiary is replaced in accordance with section 15-1875,
20 subsections E, F and G, the replacement beneficiary.

21 6. "ELIGIBLE EDUCATIONAL INSTITUTION" MEANS AN INSTITUTION OF HIGHER
22 EDUCATION THAT QUALIFIES UNDER SECTION 529 OF THE INTERNAL REVENUE CODE AS
23 AN ELIGIBLE EDUCATIONAL INSTITUTION.

24 ~~6.~~ 7. "Financial institution" means any bank, commercial bank,
25 national bank, savings bank, savings and loan association, credit union,
26 insurance company, brokerage firm or other similar entity that is authorized
27 to do business in this state.

28 ~~7. "Higher education institution" means any of the following:~~

29 ~~(a) An institution described in the higher education act of 1965 (P.L.~~
30 ~~89-329; 79 Stat. 1219; 20 United States Code sections 1001 through 1150).~~

31 ~~(b) An area vocational educational school as defined in 20 United~~
32 ~~States Code section 2471(4).~~

33 ~~(c) An institution licensed by the state board for private~~
34 ~~postsecondary education.~~

35 8. "Member of the family" means any of the following:

36 (a) A son or daughter of a person or a descendant of the son or
37 daughter of the person.

38 (b) A stepson or stepdaughter of a person.

39 (c) A brother, sister, stepbrother or stepsister of a person. For
40 purposes of this subdivision, "brother" and "sister" includes a brother or
41 sister by the half-blood.

42 (d) The father or mother of a person or the ancestor of the father or
43 mother of a person.

44 (e) A stepfather or stepmother of a person.

1 (f) A son or daughter of a person's brother or sister. For purposes
2 of this subdivision, "brother" and "sister" includes a brother or sister by
3 the half-blood.

4 (g) A brother or sister of the person's father or mother. For
5 purposes of this subdivision, "brother" and "sister" includes a brother or
6 sister by the half-blood.

7 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law,
8 brother-in-law or sister-in-law of a person.

9 (i) The spouse of a person or the spouse of any individual described
10 in this paragraph.

11 (j) A FIRST COUSIN OF A PERSON.

12 (j) (k) Any individual who meets the criteria for family membership
13 described in this paragraph as a result of legal adoption.

14 9. "Nonqualified withdrawal" means a withdrawal from an account other
15 than one of the following:

16 (a) A qualified withdrawal.

17 (b) A withdrawal made as the result of the death or disability of the
18 designated beneficiary of an account.

19 (c) A withdrawal that is made on the account of a scholarship, or the
20 allowance or payment described in section 135(d)(1)(B) or (C) of the internal
21 revenue code, and that is received by the designated beneficiary, but only
22 to the extent of the amount of this scholarship, allowance or payment.

23 (d) A rollover or change of designated beneficiary.

24 10. "Program" means the family college savings program established
25 under this article.

26 11. "Qualified higher education expenses" means tuition, fees, books,
27 supplies, room and board and equipment required for enrollment or attendance
28 of a designated beneficiary at a higher education AN ELIGIBLE EDUCATIONAL
29 institution AND EXPENSES FOR SPECIAL NEEDS SERVICES IN THE CASE OF A SPECIAL
30 NEEDS BENEFICIARY THAT ARE INCURRED IN CONNECTION WITH ENROLLMENT OR
31 ATTENDANCE.

32 12. "Qualified withdrawal" means a withdrawal from an account to pay
33 the qualified higher education expenses of the designated beneficiary of the
34 account, but only if the withdrawal is made in accordance with this article.

35 Sec. 2. Section 15-1874, Arizona Revised Statutes, is amended to read:

36 15-1874. Use of contractor as account depository and manager

37 A. The commission shall implement the program through the use of one
38 or more financial institutions to act as the depositories and
39 managers. Under the program, persons may establish accounts through the
40 program at the depository.

41 B. The committee shall solicit proposals from financial institutions
42 to act as the depositories and managers of the program. Financial
43 institutions that submit proposals must describe the financial instruments
44 that will be held in accounts.

1 C. On the recommendation of the committee, the commission shall select
2 as program depositories and managers the financial institution or
3 institutions from among bidding financial institutions that demonstrate the
4 most advantageous combination, both to potential program participants and
5 this state, of the following factors:

6 1. Financial stability and integrity.

7 2. The safety of the investment instruments being offered, taking into
8 account any insurance provided with respect to these instruments.

9 3. The ability of the investment instruments to track estimated costs
10 of higher education as calculated by the commission and provided by the
11 financial institution to the account holder.

12 4. The ability of the financial institutions, directly or through a
13 subcontract, to satisfy record keeping and reporting requirements.

14 5. The financial institution's plan for promoting the program and the
15 investment it is willing to make to promote the program.

16 6. The fees, if any, proposed to be charged to persons for maintaining
17 accounts.

18 7. The minimum initial deposit and minimum contributions that the
19 financial institution will require and the willingness of the financial
20 institution to accept contributions through payroll deduction plans and other
21 deposit plans.

22 8. Any other benefits to this state or its residents included in the
23 proposal, including an account opening fee payable to the commission by the
24 account owner and an additional fee from the financial institution for
25 statewide program marketing by the commission.

26 D. The commission shall enter into a contract with a financial
27 institution, or except as provided in subsection E of this section, contracts
28 with financial institutions, to serve as program managers and depositories.

29 E. The commission may select more than one financial institution and
30 investment for the program if both of the following conditions exist:

31 1. The United States internal revenue service has provided guidance
32 that giving a contributor a choice of two investment instruments under a
33 state plan will not cause the plan to fail to qualify for favorable tax
34 treatment under section 529 of the internal revenue code.

35 2. The commission concludes that the choice of instrument vehicles is
36 in the best interest of college savers and will not interfere with the
37 promotion of the program.

38 F. A program manager shall:

39 1. Take all action required to keep the program in compliance with the
40 requirements of this article and all action not contrary to this article or
41 its contract to manage the program so that it is treated as a qualified state
42 tuition plan under section 529 of the internal revenue code.

43 2. Keep adequate records of each account, keep each account segregated
44 from each other account and provide the commission with the information

1 necessary to prepare statements required by section 15-1875, subsections R-
2 O, S- P and T- Q or file these statements on behalf of the commission.

3 3. Compile and total information contained in statements required to
4 be prepared under section 15-1875, subsections R- O, S- P and T- Q and
5 provide these compilations to the commission.

6 4. If there is more than one program manager, provide the commission
7 with this information to assist the commission to determine compliance with
8 section 15-1875, subsection Q- N.

9 5. Provide representatives of the commission, including other
10 contractors or other state agencies, access to the books and records of the
11 program manager to the extent needed to determine compliance with the
12 contract.

13 6. Hold all accounts in trust for the benefit of this state and the
14 account owner.

15 G. Any contract executed between the commission and a financial
16 institution pursuant to this section shall be for a term of at least three
17 years and not more than seven years.

18 H. If a contract executed between the commission and a financial
19 institution pursuant to this section is not renewed, all of the following
20 conditions apply at the end of the term of the nonrenewed contract:

21 1. Accounts previously established and held in investment instruments
22 at the financial institution shall not be terminated.

23 2. Additional contributions may be made to the accounts.

24 3. No new accounts may be placed with that financial institution.

25 I. The commission may terminate a contract with a financial
26 institution at any time for good cause on the recommendation of the
27 committee. If a contract is terminated pursuant to this subsection, the
28 commission shall take custody of accounts held at that financial
29 institution and shall seek to promptly transfer the accounts to another
30 financial institution that is selected as a program manager and into
31 investment instruments as similar to the original investments as possible.

32 Sec. 3. Section 15-1875, Arizona Revised Statutes, is amended to read:

33 15-1875. Program requirements

34 A. The program shall be operated through the use of accounts. An
35 account may be opened by any person who desires to save to pay the qualified
36 higher education expenses of a person by satisfying each of the following
37 requirements:

38 1. Completing an application in the form prescribed by the
39 commission. The application shall include the following information:

40 (a) The name, address and social security number or employer
41 identification number of the contributor.

42 (b) The name, address and social security number of the account owner
43 if the account owner is not the contributor.

44 (c) The name, address and social security number of the designated
45 beneficiary.

1 (d) The certification relating to no excess contributions required by
2 subsection Q- N.

3 (e) Any other information that the commission may require.

4 2. Paying the one-time application fee established by the commission.

5 3. Making the minimum contribution required by the commission or by
6 opening an account.

7 4. Designating the type of account to be opened if more than one type
8 of account is offered.

9 B. Any person may make contributions to an account after the account
10 is opened.

11 C. Contributions to accounts may be made only in cash.

12 D. Account owners may withdraw all or part of the balance from an
13 account on sixty days' notice, or a shorter period as may be authorized by
14 the commission, under rules prescribed by the commission. These rules shall
15 include provisions that will generally enable the commission or program
16 manager to determine if a withdrawal is a nonqualified withdrawal or a
17 qualified withdrawal. The rules may, but need not, require one or more of
18 the following:

19 1. Account owners seeking to make a qualified withdrawal or other
20 withdrawal that is not a nonqualified withdrawal shall provide
21 certifications, copies of bills for qualified higher education expenses or
22 other supporting material.

23 2. Qualified withdrawals from an account shall be made only by a check
24 payable as designated by the account owner.

25 3. Withdrawals not meeting certain requirements shall be treated as
26 nonqualified withdrawals by the program manager, and if these withdrawals are
27 not nonqualified withdrawals, the account owner must seek refunds of
28 penalties, IF ANY, directly from the commission.

29 E. An account owner may change the designated beneficiary of an
30 account to an individual who is a member of the family of the former
31 designated beneficiary in accordance with procedures established by the
32 commission.

33 F. On the direction of an account owner, all or a portion of an
34 account may be transferred to another account of which the designated
35 beneficiary is a member of the family of the designated beneficiary of the
36 transferee account.

37 G. Changes in designated beneficiaries and rollovers under this
38 section are not permitted if the changes or rollovers would violate either
39 of the following:

40 1. Subsection Q- N, relating to excess contributions.

41 2. Subsection N- K, relating to investment choice.

42 ~~H. In the case of any nonqualified withdrawal from an account, an~~
43 ~~amount equal to ten per cent of the portion of the proposed withdrawal that~~
44 ~~would constitute income as determined in accordance with section 529 of the~~
45 ~~internal revenue code shall be withheld as a penalty and paid to the~~

1 ~~commission for use in operating and marketing the program and for state~~
2 ~~student financial aid.~~

3 ~~i. The commission, by rule, shall increase the percentage of the~~
4 ~~penalty prescribed in subsection H or change the basis of this penalty if the~~
5 ~~commission determines that the amount of the penalty must be increased to~~
6 ~~constitute a penalty that is more than a de minimis penalty for purposes of~~
7 ~~qualifying the program as a qualified state tuition program under section 529~~
8 ~~of the internal revenue code.~~

9 ~~j. The commission may decrease the percentage of the penalty~~
10 ~~prescribed in subsection H if it determines that both of the following~~
11 ~~conditions exist:~~

12 ~~1. The penalty is greater than is required to constitute a penalty~~
13 ~~that is more than a de minimis penalty for purposes of qualifying the program~~
14 ~~as a qualified state tuition program under section 529 of the internal~~
15 ~~revenue code.~~

16 ~~2. The penalty, when combined with other revenue generated under this~~
17 ~~article, is producing more revenue than is required to cover the costs of~~
18 ~~operating and marketing the program and to recover any costs not previously~~
19 ~~recovered.~~

20 ~~k. If an account owner makes a nonqualified withdrawal and no penalty~~
21 ~~amount is withheld pursuant to subsection H or the amount withheld is less~~
22 ~~than the amount required to be withheld under that subsection for~~
23 ~~nonqualified withdrawals, the account owner shall pay the unpaid portion of~~
24 ~~the penalty to the commission on or before April 15 of the following tax~~
25 ~~year.~~

26 ~~H. IN THE CASE OF ANY NONQUALIFIED WITHDRAWAL FROM AN ACCOUNT, A~~
27 ~~PENALTY MAY BE IMPOSED IF THE PENALTY IS REQUIRED FOR PURPOSES OF QUALIFYING~~
28 ~~THE PROGRAM AS A QUALIFIED TUITION PROGRAM UNDER SECTION 529 OF THE INTERNAL~~
29 ~~REVENUE CODE. THE COMMISSION MAY ADOPT RULES TO ESTABLISH THE PARAMETERS FOR~~
30 ~~THE ASSESSMENT OF PENALTIES. ANY PENALTIES ASSESSED SHALL BE PAID TO THE~~
31 ~~COMMISSION FOR USE IN OPERATING AND MARKETING THE PROGRAM AND FOR STUDENT~~
32 ~~FINANCIAL AID.~~

33 ~~t. I. Each account shall be maintained separately from each other~~
34 ~~account under the program.~~

35 ~~m. J. Separate records and accounting shall be maintained for each~~
36 ~~account for each designated beneficiary.~~

37 ~~n. K. No contributor to, account owner of or designated beneficiary~~
38 ~~of any account may direct the investment, WITHIN THE MEANING OF SECTION 529~~
39 ~~OF THE INTERNAL REVENUE CODE, of any contributions to an account or the~~
40 ~~earnings from the account.~~

41 ~~o. L. If the commission terminates the authority of a financial~~
42 ~~institution to hold accounts and accounts must be moved from that financial~~
43 ~~institution to another financial institution, the commission shall select the~~
44 ~~financial institution and type of investment to which the balance of the~~
45 ~~account is moved unless the internal revenue service provides guidance~~

1 stating that allowing the account owner to select among several financial
2 institutions that are then contractors would not cause a plan to cease to be
3 a qualified state tuition plan.

4 P. M. Neither an account owner nor a designated beneficiary may use
5 an interest in an account as security for a loan. Any pledge of an interest
6 in an account is of no force and effect.

7 Q. N. On the recommendation of the committee, the commission shall
8 adopt rules to prevent contributions on behalf of a designated beneficiary
9 in excess of those necessary to pay the qualified higher education expenses
10 of the designated beneficiaries. The rules shall address the following:

11 1. Procedures for aggregating the total balances of multiple accounts
12 established for a designated beneficiary.

13 2. The establishment of a maximum total balance that may be held in
14 ~~accounts for a designated beneficiary~~ FOR THE PURPOSE OF PROHIBITING
15 CONTRIBUTIONS TO ACCOUNTS ESTABLISHED FOR A DESIGNATED BENEFICIARY IF THE
16 CONTRIBUTIONS WOULD CAUSE THE MAXIMUM TOTAL BALANCE TO BE EXCEEDED.

17 3. The commission shall review the quarterly reports received from
18 participating financial institutions and certify that the balance in all
19 qualified state tuition programs, as defined in section 529 of the internal
20 revenue code, of which that person is the designated beneficiary does not
21 exceed the lesser of:

22 (a) A maximum college savings amount established by the commission
23 from time to time.

24 (b) The cost in current dollars of qualified higher education expenses
25 that the contributor reasonably anticipates the designated beneficiary will
26 incur.

27 4. Requirements that any excess ~~balances~~ CONTRIBUTIONS with respect
28 to a designated beneficiary be promptly withdrawn in a nonqualified
29 withdrawal or rolled over to another account in accordance with this section.

30 R. O. If there is any distribution from an account to any person or
31 for the benefit of any person during a calendar year, the distribution shall
32 be reported to the internal revenue service and the account owner or the
33 designated beneficiary to the extent required by federal law.

34 S. P. The financial institution shall provide statements to each
35 account owner at least once each year within thirty-one days after the twelve
36 month period to which they relate. The statement shall identify the
37 contributions made during a preceding twelve month period, the total
38 contributions made through the end of the period, the value of the account
39 as of the end of this period, distributions made during this period and any
40 other matters that the commission requires be reported to the account owner.

41 T. Q. Statements and information returns relating to accounts shall
42 be prepared and filed to the extent required by federal or state tax law.

43 U. R. A state or local government or organizations described in
44 section 501(c)(3) of the internal revenue code may open and become the

1 account owner of an account to fund scholarships for persons whose identity
2 will be determined after an account is opened.

3 ~~V.~~ S. In the case of any account described in subsection ~~U~~ R, the
4 requirement that a designated beneficiary be designated when an account is
5 opened does not apply and each person who receives an interest in the account
6 as a scholarship shall be treated as a designated beneficiary with respect
7 to the interest.

8 ~~W.~~ T. Any social security numbers, addresses or telephone numbers of
9 individual account holders and designated beneficiaries that come into the
10 possession of the commission are confidential, are not public records and
11 shall not be released by the commission.

12 Sec. 4. Section 15-1878, Arizona Revised Statutes, is amended to read:
13 15-1878. Limitations of article

14 A. Nothing in this article shall be construed to:

15 1. Give any designated beneficiary any rights or legal interest with
16 respect to an account unless the designated beneficiary is the account owner.

17 2. Guarantee that a designated beneficiary will be admitted to a
18 higher~~education~~ AN ELIGIBLE EDUCATIONAL institution or be allowed to
19 continue enrollment at or graduate from a higher~~education~~ AN ELIGIBLE
20 EDUCATIONAL institution located in this state after admission.

21 3. Establish state residency for a person merely because the person
22 is a designated beneficiary.

23 4. Guarantee that amounts saved pursuant to the program will be
24 sufficient to cover the qualified higher education expenses of a designated
25 beneficiary.

26 B. Nothing in this article establishes any obligation of this state
27 or any agency or instrumentality of this state to guarantee for the benefit
28 of any account owner, contributor to an account or designated beneficiary any
29 of the following:

30 1. The return of any amounts contributed to an account.

31 2. The rate of interest or other return on any account.

32 3. The payment of interest or other return on any account.

33 4. Tuition rates or the cost of related higher education expenditures.

34 C. Under rules adopted by the commission, every contract, application,
35 deposit slip or other similar document that may be used in connection with
36 a contribution to an account shall clearly indicate that the account is not
37 insured by this state and neither the principal deposited nor the investment
38 return is guaranteed by this state.

39 Sec. 5. Retroactivity

40 This act applies retroactively to from and after December 31, 2001.

APPROVED BY THE GOVERNOR MAY 1, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2002.

Passed the House March 26, 2002,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
Norman L. Moore
Chief Clerk of the House

Passed the Senate April 25, 2002,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Charmine Bellinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of April, 2002

at 3:23 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 1 day of

May, 2002,

at 3:10 o'clock P M.

[Signature]
Governor of Arizona

H.B. 2098

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 2nd day of May, 2002

at 4:23 o'clock P M.

[Signature]
Secretary of State