

HOUSE BILL 30

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HB 826/02 - APP

2003 Regular Session
3lr0507
CF 3lr2178

By: **Delegate Leopold**

Introduced and read first time: January 15, 2003

Assigned to: Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2003

CHAPTER 382

1 AN ACT concerning

2

College Savings Plans of Maryland

3 FOR the purpose of establishing the College Savings Plans of Maryland which include
4 certain existing tuition programs ~~and certain additional State tuition programs~~
5 ~~under certain circumstances~~; clarifying the purpose of the College Savings Plans
6 of Maryland; changing the name of the Maryland Higher Education Investment
7 Board to the College Savings Plans of Maryland Board; altering the duties and
8 responsibilities of the Board; authorizing Board members to designate a
9 representative under certain circumstances; ~~authorizing the Board to create~~
10 ~~additional qualified State tuition programs under certain circumstances and~~
11 ~~subject to certain requirements~~ adding a certain member to the Board; providing
12 that the College Savings Plans, the Board, and investment accounts are not
13 subject to certain provisions of law; requiring certain custodians to deny the
14 inspection of certain public records under certain circumstances; authorizing the
15 inspection of certain public records; requiring certain disclosures; altering
16 certain terms; clarifying certain definitions; providing for the application of this
17 Act; and generally relating to the College Savings Plans of Maryland.

18 BY repealing and reenacting, with amendments,

19 Article - Education

20 Section 18-1901, 18-1903 through 18-1906.1, 18-1907 through 18-1913,

21 18-1916, 18-19A-01, 18-19A-02, 18-19A-04, 18-19A-05, and 18-19A-07

22 Annotated Code of Maryland

23 (2001 Replacement Volume and 2002 Supplement)

24 BY adding to

25 Article - Education

1 Section 18-1902.1, ~~18-1905.1~~, 18-19A-05.1, and 18-19A-06.1
2 Annotated Code of Maryland
3 (2001 Replacement Volume and 2002 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article - State Government
6 Section 10-616(a)
7 Annotated Code of Maryland
8 (1999 Replacement Volume and 2002 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article - State Government
11 Section 10-616(n)
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2002 Supplement)

14 BY repealing and reenacting, with amendments,
15 Chapter 110 of the Acts of the General Assembly of 1997, as amended by
16 Chapter 494 of the Acts of the General Assembly of 2000
17 Section 5

18 BY repealing and reenacting, with amendments,
19 Chapter 111 of the Acts of the General Assembly of 1997, as amended by
20 Chapter 494 of the Acts of the General Assembly of 2000
21 Section 5

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Education**

25 18-1901.

26 (a) In this subtitle the following words have the meanings indicated.

27 (b) "Board" means the [Maryland Higher Education Investment Board]
28 COLLEGE SAVINGS PLANS OF MARYLAND BOARD.

29 (c) "Current prepaid contract obligations" means the scheduled payments due
30 for the next fiscal year under existing prepaid contracts.

31 (d) "Eligible institution of higher education" means an institution of higher
32 education that:

33 (1) Offers an associate, bachelor, or graduate degree program; and

34 (2) Is eligible to participate in federal financial aid programs.

1 (e) "Prepaid contract" means a contract between the Board and [a purchaser]
2 AN ACCOUNT HOLDER under the provisions of this subtitle for the advance payment
3 of qualified higher education expenses by the [purchaser] ACCOUNT HOLDER for a
4 qualified beneficiary to attend an eligible institution of higher education, if the
5 qualified beneficiary is admitted to the institution.

6 (f) "Market value of program assets" means the amount of cash and cash
7 equivalents held by the [Program] TRUST plus the fair market value of other assets
8 of the [Program] TRUST.

9 (g) "Plan" means the Maryland College Investment Plan established under
10 Subtitle 19A of this title.

11 (h) "Program" means the [Maryland Prepaid College Trust established under
12 this subtitle] COLLEGE SAVINGS PLANS OF MARYLAND.

13 (i) ["Purchaser"] "ACCOUNT HOLDER" means an individual who:

14 (1) Makes or undertakes the obligation to make advance payments of
15 qualified higher education expenses as provided under a prepaid contract; and

16 (2) Except as provided in § 18-1909(b) of this subtitle, is a resident of
17 Maryland or of the District of Columbia at the time that the [purchaser] ACCOUNT
18 HOLDER enters into a prepaid contract.

19 (j) "Qualified beneficiary" means an individual who:

20 (1) Is eligible to apply advance payments of qualified higher education
21 expenses to undergraduate or graduate qualified higher education expenses at an
22 eligible institution of higher education under the provisions of this subtitle; and

23 (2) Except as provided in § 18-1909(b) of this subtitle, is a resident of the
24 State or of the District of Columbia at the time that the [purchaser] ACCOUNT
25 HOLDER enters into a prepaid contract.

26 (k) "Qualified higher education expenses" has the meaning stated in § 529(e)
27 of the Internal Revenue Code.

28 (l) "Qualified state tuition program" has the meaning stated in § 529 of the
29 Internal Revenue Code.

30 (m) "TRUST" MEANS THE MARYLAND PREPAID COLLEGE TRUST ESTABLISHED
31 UNDER THIS SUBTITLE.

32 (N) ~~"Tuition" means the charges imposed by an eligible institution of higher~~
33 ~~education for enrollment at the institution and includes registration and all fees~~
34 ~~required as a condition of enrollment~~

1 (1) "TUITION" MEANS THE ACTUAL TUITION AND MANDATORY FEES
2 ASSESSED TO ALL STUDENTS BY AN ELIGIBLE INSTITUTION OF HIGHER EDUCATION
3 AS A CONDITION OF ENROLLMENT AT THE INSTITUTION.

4 (2) "TUITION" DOES NOT INCLUDE ANY FEE THAT IS ASSESSED BY THE
5 INSTITUTION FOR A PARTICULAR COURSE TAKEN, YEAR OF ENROLLMENT,
6 ACADEMIC STATUS, COURSE OF STUDY, RESIDENCY STATUS, OR ANY OTHER
7 DISTINGUISHING FACTOR USED BY THE INSTITUTION TO DETERMINE A SPECIFIC
8 FEE.

9 18-1902.1.

10 (A) THERE IS A PROGRAM ENTITLED THE COLLEGE SAVINGS PLANS OF
11 MARYLAND.

12 (B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE FOR THE
13 ADMINISTRATION BY THE BOARD OF THE MARYLAND PREPAID COLLEGE TRUST AND
14 THE MARYLAND COLLEGE INVESTMENT PLAN ~~AND ANY OTHER QUALIFIED STATE~~
15 ~~TUITION PROGRAM ESTABLISHED BY THE BOARD IN ACCORDANCE WITH § 18-1905.1~~
16 ~~OF THIS SUBTITLE.~~

17 18-1903.

18 (a) There is a Maryland Prepaid College Trust.

19 (b) The purpose of the [Program] TRUST is to provide:

20 (1) A means for payment of the cost of tuition in advance of enrollment at
21 an eligible institution of higher education; and

22 (2) An assurance to a beneficiary who enrolls at an eligible institution of
23 higher education that the Board shall make every effort to invest the advance
24 payments so that the prepaid contract will cover the average in-State tuition costs at
25 public institutions of higher education in the State at the time that the benefits are
26 exercised.

27 (c) THE BOARD SHALL ADMINISTER THE TRUST IN COMPLIANCE WITH
28 INTERNAL REVENUE SERVICE STANDARDS FOR QUALIFIED STATE TUITION
29 PROGRAMS.

30 (D) The funds of the [Program] TRUST consist of:

31 (1) Payments received from prepaid contracts made under the provisions
32 of this subtitle;

33 (2) Bequests, endowments, or funds from any other available private
34 source;

35 (3) Interest and income earned from the investments of the [Program]
36 TRUST; and

1 (4) Federal, State, or local funds, or funds from any other available
2 public source.

3 [(d)] (E) Money remaining in the [Program] TRUST at the end of the fiscal
4 year shall remain in the [Program] TRUST and may not revert to the General Fund of
5 the State.

6 [(e)] (F) Moneys of the [Program] TRUST may not be considered moneys of
7 the State and may not be deposited into the Treasury.

8 [(f)] (G) Moneys of the [Program] TRUST may not be considered moneys of
9 the Maryland College Investment Plan and may not be commingled with the Plan.

10 [(g)] (H) (1) The debts, contracts, and obligations of the [Program] TRUST
11 are not the contracts, debts, or obligations of the State and neither the faith and
12 credit nor taxing power of the State is pledged directly or indirectly or contingently,
13 morally or otherwise, to the payment of the debts, contracts, and obligations.

14 (2) The Board cannot directly or indirectly or contingently obligate,
15 morally or otherwise, the State to levy or pledge any form of taxation whatsoever for
16 the debts and obligations of the [Program] TRUST or to make any appropriation for
17 the payment of the debts and obligations of the [Program] TRUST.

18 [(h)] (I) Neither the State nor any eligible institution of higher education
19 shall be liable for any losses or shortage of funds in the event that the Maryland
20 Prepaid College Trust is insufficient to meet the tuition requirements of an
21 institution attended by the qualified beneficiary.

22 18-1904.

23 (a) There is a [Maryland Higher Education Investment Program] COLLEGE
24 SAVINGS PLANS OF MARYLAND Board.

25 (b) The Board shall [oversee the administration of] ADMINISTER:

26 (1) The Maryland Prepaid College Trust established under this subtitle;
27 and

28 (2) The Maryland College Investment Plan established under Subtitle
29 19A of this title~~}; AND~~

30 ~~(3) ANY OTHER QUALIFIED STATE TUITION PROGRAM ESTABLISHED BY~~
31 ~~THE BOARD PURSUANT TO § 18-1905.1 OF THIS SUBTITLE.~~

32 (c) The Board consists of the following ~~nine~~ 10 members:

33 (1) The Secretary of the Maryland Higher Education Commission;

34 (2) The State Superintendent of Schools;

35 (3) The State Treasurer;

1 (4) The State Comptroller; [and]

2 (5) THE CHANCELLOR OF THE UNIVERSITY SYSTEM OF MARYLAND; AND

3 (6) Five members of the public who shall be appointed by the Governor
4 and shall have significant experience in finance, accounting, investment
5 management, or other areas that can be of assistance to the Board.

6 (d) A MEMBER OF THE BOARD DESIGNATED UNDER SUBSECTION (C)(1)
7 THROUGH ~~(4)~~ (5) OF THIS SECTION MAY DESIGNATE AN EMPLOYEE FROM THE
8 MEMBER'S STAFF TO REPRESENT THE MEMBER OF THE BOARD, WITH THE FULL
9 VOTING RIGHTS, POWERS, AND DUTIES OF THE MEMBER.

10 (E) Before taking office, each appointee to the Board shall take the oath
11 required by Article I, § 9 of the Maryland Constitution.

12 [(e)] (F) (1) Except for the terms of the initial members of the Board, the
13 term of a public member of the Board is 4 years.

14 (2) The terms of the public members of the Board are staggered as
15 required by the terms of the members of the Board on October 1, 1998.

16 (3) At the end of a term, a public member continues to serve until a
17 successor is appointed and qualifies.

18 (4) A public member who is appointed after a term has begun serves only
19 for the remainder of the term and until a successor is appointed and qualifies.

20 (5) A public member is eligible for reappointment.

21 [(f)] (G) The Governor may remove a public member for incompetence or
22 misconduct.

23 18-1905.

24 (a) The Board, from among the members of the Board, shall elect a chairman
25 and may elect additional officers that the Board considers necessary.

26 (b) The Board shall determine the times and places of meetings.

27 (c) A member of the Board:

28 (1) May not receive compensation;

29 (2) Is entitled to reimbursement for expenses under the Standard State
30 Travel Regulations; and

31 (3) Shall file a public disclosure of financial interests as required under
32 the Maryland Public Ethics Law.

33 (d) (1) The Board:

1 (i) Shall appoint [an] A PROGRAM executive director who is in the
2 executive service of the State Personnel Management System; and

3 (ii) May employ additional staff in accordance with the budget.

4 (2) (i) Except for employees described in subparagraph (ii) or (iii) of
5 this paragraph, the employees shall be skilled service employees subject to the
6 provisions of the State Personnel and Pensions Article that govern skilled service
7 employees.

8 (ii) An employee is in the professional service and subject to the
9 provisions of the State Personnel and Pensions Article that govern professional
10 service employees if the position:

11 1. Requires knowledge of an advanced type in a field of
12 science or learning customarily acquired by a course of specialized intellectual
13 instruction and study; and

14 2. Normally requires a professional license, an advanced
15 degree, or both.

16 (iii) An employee is in the management service and subject to the
17 provisions of the State Personnel and Pensions Article that govern management
18 service employees if the position:

19 1. Primarily involves direct responsibility for the oversight
20 and management of personnel and financial resources;

21 2. Requires the exercise of discretion and independent
22 judgment; and

23 3. Is not in the executive service.

24 (3) The Board may retain the services of consultants, administrators,
25 and other personnel, as necessary, to administer the [Program] TRUST or the Plan.

26 (4) The budget for THE PROGRAM, the Board, and its staff is subject to
27 review by the General Assembly for information purposes only.

28 (e) The Board may adopt any regulations that the Board considers necessary
29 to carry out the provisions of this subtitle or Subtitle 19A of this title.

30 (f) In addition, the Board may:

31 (1) Adopt an official seal;

32 (2) Sue and be sued;

33 (3) Execute contracts and other necessary instruments;

1 (4) Hold, buy, and sell instruments, obligations, securities, and other
2 investments consistent with its comprehensive investment plan;

3 (5) Enter into agreements with eligible institutions of higher education
4 and other public or private entities for the promotion, administration, or marketing of
5 the Program, THE TRUST, or the Plan;

6 (6) Invest funds not required for immediate disbursement;

7 (7) Solicit and accept gifts, grants, loans, or other aid from any source or
8 participate in any government program for purposes consistent with this subtitle and
9 Subtitle 19A of this title;

10 (8) Subject to the review of the General Assembly, impose and collect
11 reasonable administrative fees for any transactions UNDER THE TRUST OR THE PLAN
12 OR involving prepaid contracts or transactions affecting the Program, THE TRUST, or
13 the Plan;

14 (9) Procure insurance against any loss of assets of the Program, THE
15 TRUST, or the Plan;

16 (10) Endorse insurance coverage written exclusively for the purpose of
17 protecting [a prepaid contract and the purchaser and qualified beneficiary of the
18 contract];

19 (I) A PREPAID CONTRACT UNDER THE TRUST AND THE ACCOUNT
20 HOLDER AND THE QUALIFIED BENEFICIARY OF THE CONTRACT; OR

21 (II) AN INVESTMENT ACCOUNT UNDER THE PLAN AND THE
22 ACCOUNT HOLDER AND QUALIFIED DESIGNATED BENEFICIARY OF THE
23 INVESTMENT ACCOUNT.

24 (11) Designate terms under which money may be withdrawn from the
25 Program, THE TRUST, or the Plan;

26 (12) Establish additional procedural and substantive requirements for
27 participation in and the administration or marketing of the Program, THE TRUST, or
28 the Plan;

29 (13) Appear on the Board's own behalf before other boards, commissions,
30 or other governmental agencies; and

31 (14) Take any other action that the Board considers appropriate to
32 implement and administer the Program, THE TRUST, or the Plan.

33 ~~18-1905.1.~~

34 ~~(A) THE BOARD MAY CREATE ADDITIONAL QUALIFIED STATE TUITION~~
35 ~~PROGRAMS FOR THE PURPOSE OF:~~

1 (1) ~~PARTNERING WITH A PRIVATE COLLEGE TO ADMINISTER A PREPAID~~
2 ~~TUITION PROGRAM;~~

3 (2) ~~CREATING BROKER OR DEALER AGREEMENTS; AND~~

4 (3) ~~PARTNERING WITH A RETAIL BUSINESS TO OFFER TUITION~~
5 ~~PROGRAMS TO THE EMPLOYEES AND CUSTOMERS OF THE RETAIL BUSINESS.~~

6 ~~(B) THE BOARD SHALL ADMINISTER ANY ADDITIONAL QUALIFIED STATE~~
7 ~~TUITION PROGRAMS IN COMPLIANCE WITH INTERNAL REVENUE SERVICE~~
8 ~~STANDARDS FOR QUALIFIED STATE TUITION PROGRAMS.~~

9 ~~(C) THE BOARD SHALL ADOPT PROCEDURES FOR ANY ADDITIONAL~~
10 ~~QUALIFIED STATE TUITION PROGRAMS DESCRIBED UNDER SUBSECTION (A) OF THIS~~
11 ~~SECTION THAT THE BOARD CONSIDERS NECESSARY TO CARRY OUT THE PROVISIONS~~
12 ~~OF THIS SUBTITLE OR SUBTITLE 19A OF THIS TITLE.~~

13 18-1906.

14 (a) The Board shall adopt a comprehensive investment plan for the
15 administration of the [Program] TRUST.

16 (b) The plan shall specify the investment policies used by the Board in the
17 administration of the [Program] TRUST.

18 (c) Assets of the [Program] TRUST shall be invested in accordance with the
19 comprehensive investment plan.

20 (d) The comprehensive investment plan must indicate the percentage of assets
21 that shall be held in each class of investment, the amount of funds held in any cash
22 pool, the amount of funds held in fixed assets investments, the amount of funds held
23 in equity investments, and the percentage and dollar value of assets placed with
24 outside managers.

25 (e) (1) Notwithstanding any law restricting the deposit or investment of
26 State money, the Board may place assets of the [Program] TRUST in savings accounts
27 or may use the assets to purchase fixed or variable life insurance or annuity
28 contracts, securities, evidence of indebtedness, or other investment products pursuant
29 to the comprehensive investment plan.

30 (2) Any insurance, annuity contracts, savings, or other investment
31 products procured by the Board shall be underwritten and offered in compliance with
32 applicable federal and State laws.

33 (f) The Board shall make every effort to invest the assets of the [Program]
34 TRUST in a manner that earns, at a minimum, sufficient earnings to generate the
35 difference between the prepaid amount under prepaid contracts and the average
36 in-State tuition costs at public institutions of higher education in the State at the
37 time that the benefits are exercised.

1 (g) The comprehensive investment plan shall provide for the [Program]
2 TRUST to be administered in an actuarially sound manner to assure that the Board
3 may defray obligations of the [Program] TRUST.

4 (h) The Board shall review the comprehensive investment plan at least
5 annually to assure that the [Program] TRUST remains actuarially sound.

6 (i) The Board may contract with an investment advisory or management
7 company for the investment and management of the [Program] TRUST as long as the
8 [Program] TRUST is administered in accordance with the comprehensive investment
9 plan.

10 (j) The Board:

11 (1) Shall preserve, invest, and expend the assets of the [Program]
12 TRUST solely for the purposes of this subtitle; and

13 (2) May not loan, transfer, or use the assets for any other purpose of the
14 State.

15 (k) The [Program] TRUST is not subject to § 7-302 of the State Finance and
16 Procurement Article.

17 (l) Unless the Board provides otherwise by regulation, the Board shall use the
18 proceeds in the [Program] TRUST in the following order:

19 (1) To pay eligible institutions of higher education in accordance with the
20 Board's obligations under prepaid contracts;

21 (2) To refund money on the termination of prepaid contracts; and

22 (3) To pay the operating expenses of the Board.

23 (m) (1) Except as provided in paragraph (2) of this subsection, if the Board
24 determines after an annual review that the market value of [Program] TRUST assets
25 exceeds the amount necessary to satisfy all scheduled payments currently due or
26 scheduled to become due under all prepaid contracts by 30% or more, the Board may
27 provide for a rebate from the excess to [purchasers] ACCOUNT HOLDERS of existing
28 prepaid contracts in an amount to be determined by the Board.

29 (2) The Board may not rebate any amount to [purchasers] ACCOUNT
30 HOLDERS if, within the 5 years immediately preceding the proposed rebate:

31 (i) The Board has requested an appropriation under § 18-1906.1 of
32 this subtitle; or

33 (ii) The [Program] TRUST has failed to repay to the State any
34 appropriation under § 18-1906.1 of this subtitle.

1 18-1906.1.

2 (a) If the current prepaid contract obligations of the [Program] TRUST exceed
3 the market value of [Program] TRUST assets, at the request of the Board the
4 Governor shall include in the annual budget bill submitted to the General Assembly
5 an appropriation in the amount determined under subsection (b) of this section.

6 (b) The appropriation to be included in the budget bill under subsection (a) of
7 this section shall equal the difference between the current prepaid contract
8 obligations and the market value of [Program] TRUST assets.

9 (c) For purposes of this section, the current prepaid contract obligations and
10 the market value of [Program] TRUST assets:

11 (1) Shall be determined as of June 30 of the calendar year that ended
12 before the beginning of the fiscal year for which the appropriation is requested; and

13 (2) Shall be verified by the report of the independent outside auditor
14 required under § 18-1916 of this subtitle.

15 (d) (1) The amount appropriated under this section shall be deposited into
16 the [Program] TRUST.

17 (2) All amounts paid into the [Program] TRUST under this section shall
18 constitute and be accounted for as advances to the [Program] TRUST.

19 (3) Subject to the rights of the [Program's] TRUST'S contract holders,
20 amounts appropriated under this section shall be repaid to the State without interest
21 in equal amounts in each of the next 2 fiscal years succeeding the one for which the
22 appropriation was made.

23 (4) If the appropriation in the State budget as enacted by the General
24 Assembly is less than the amount specified under subsection (b) of this section, the
25 Board may adjust the terms of subsequent or current prepaid contracts to ensure
26 continued actuarial soundness of the [Program] TRUST.

27 18-1907.

28 (a) In this section, "fiduciary" means:

29 (1) A member of the [Maryland Higher Education Investment] Board; or

30 (2) An employee of the [Maryland Prepaid College] PROGRAM OR THE
31 Trust who exercises any discretionary authority or control over:

32 (i) The management or administration of the [Program] TRUST; or

33 (ii) The management or disposition of the assets of the [Program]
34 TRUST.

1 (b) A fiduciary shall discharge the fiduciary's duties with respect to the
2 [Program] TRUST:

3 (1) Solely in the interest of the participants;

4 (2) For the exclusive purposes of providing benefits to the participants
5 and providing reasonable expenses of administering the [Program] TRUST;

6 (3) With the care, skill, prudence, and diligence under the circumstances
7 then prevailing, that a prudent person acting in a like capacity and familiar with such
8 matters would use in the conduct of an enterprise of a like character with like aims;

9 (4) By diversifying the investments of the [Program] TRUST so as to
10 minimize the risk of large losses, unless under the circumstances it is clearly prudent
11 not to do so;

12 (5) In accordance with the laws governing the [Program] TRUST; and

13 (6) In accordance with the documents and instruments governing the
14 [Program] TRUST to the extent that the documents and instruments are consistent
15 with this subtitle.

16 (c) In exercising authority, control, or discretion with respect to the
17 [Program] TRUST, a fiduciary may not:

18 (1) Use the assets of the [Program] TRUST for the fiduciary's own
19 interest or account;

20 (2) Act in a transaction involving the [Program] TRUST on behalf of a
21 person, or represent a person, if the interests of the person are adverse to the
22 interests of the [Program] TRUST or the interests of participants;

23 (3) Receive any consideration for the fiduciary's own account from a
24 person dealing with the [Program] TRUST in connection with a transaction involving
25 the assets of the [Program] TRUST; or

26 (4) Become an endorser or surety or, in any manner, an obligor, for
27 money lent to or borrowed from the Board.

28 18-1908.

29 (a) The Board shall purchase a bond for each fiduciary in accordance with
30 Title 9, Subtitle 17 of the State Government Article.

31 (b) Unless a fiduciary is bonded, the fiduciary may not exercise custody or
32 control of any assets of the [Program] TRUST.

33 (c) A fiduciary may not allow another fiduciary to act in violation of this
34 section.

1 18-1909.

2 (a) The Board shall establish [a program of] prepaid contracts UNDER THE
3 TRUST to provide for the advance payment of tuition ~~and mandatory fees~~ at:

- 4 (1) A community college;
- 5 (2) A 4-year college;
- 6 (3) A university; or
- 7 (4) Any combination of a community college, college, or university.

8 (b) (1) For the purpose of entering into a prepaid contract, either the
9 [purchaser] ACCOUNT HOLDER or the qualified beneficiary must be a resident of
10 Maryland or of the District of Columbia at the time that the [purchaser] ACCOUNT
11 HOLDER enters into the prepaid contract.

12 (2) For the purposes of determining residency for the purchase of a
13 prepaid contract:

14 (i) For residency in Maryland, "resident" has the meaning stated
15 in § 10-101(h) of the Tax - General Article; and

16 (ii) For residency in the District of Columbia, "resident" has the
17 meaning stated in § 47-1801.04 of the District of Columbia Code Annotated.

18 (c) The cost of a prepaid contract shall be based on:

19 (1) The average current in-State tuition costs at the time the prepaid
20 contract is purchased at public institutions of higher education in the State;

21 (2) The number of years expected to elapse between the purchase of a
22 prepaid contract and the use of the benefits of the prepaid contract; and

23 (3) The projected tuition costs at the time that the benefits will be
24 exercised.

25 (d) Each prepaid contract made under the provisions of this subtitle shall
26 include the following provisions:

27 (1) The amount of each payment and the number of payments required
28 from [a purchaser] AN ACCOUNT HOLDER;

29 (2) The terms and conditions under which [purchasers] ACCOUNT
30 HOLDERS shall remit payments, including the dates of the payments;

31 (3) Provisions for late payment charges and defaults;

32 (4) Penalties for early withdrawal from the [Program] TRUST;

1 (5) The amount and terms of any administrative fees that must be paid
2 by the [purchaser] ACCOUNT HOLDER or the beneficiary;

3 (6) The name and date of birth of the qualified beneficiary on whose
4 behalf the contract is made;

5 (7) Terms and conditions for a substitution for the qualified beneficiary
6 originally named;

7 (8) Terms and conditions for the termination of the prepaid contract;

8 (9) The time period during which the qualified beneficiary may claim
9 benefits from the [Program] TRUST;

10 (10) The maximum number of undergraduate semester hours that are
11 prepaid under the prepaid contract, based on in-State tuition at a public institution of
12 higher education in the State;

13 (11) All other rights and obligations of the [purchaser] ACCOUNT
14 HOLDER and the [Program] TRUST; and

15 (12) Any other terms and conditions that the Board considers necessary or
16 appropriate.

17 (e) The Board shall allow the conversion of a prepaid contract from one tuition
18 plan or payment option to a different tuition plan or payment option.

19 (f) The Board shall allow excess prepaid contract benefits due to receipt of a
20 scholarship, tuition remission, or early graduation from college to be used toward the
21 payment of other qualified higher education expenses, as specified by the Board, at
22 an eligible institution of higher education.

23 (g) The Board shall allow the transfer of funds from the [Program] TRUST to
24 any other qualified State tuition program or from any other qualified State tuition
25 program to the [Program] TRUST, in accordance with federal law.

26 (h) The Board shall set procedures to ensure that contributions to the
27 [Program] TRUST plus contributions or payments to other qualified State tuition
28 programs do not exceed a total maximum amount determined by § 529 of the Internal
29 Revenue Code for contributions to multiple qualified State tuition programs.

30 18-1910.

31 (a) (1) The Board shall issue refunds as specified in this section.

32 (2) Unless authorized by the Board or under subsection (b) of this
33 section, a refund may not exceed the amount paid into the [Program] TRUST by the
34 [purchaser] ACCOUNT HOLDER.

35 (b) A refund equal to the same benefits as provided by the prepaid contract,
36 minus any amount paid out of the funds of the [Program] TRUST on behalf of the

1 qualified beneficiary and for reasonable administrative charges, shall be made if the
2 beneficiary:

3 (1) Graduates early from college or is awarded a scholarship or tuition
4 remission that covers benefits provided under the prepaid contract; or

5 (2) Dies or suffers from a disability which prevents the beneficiary from
6 attending an institution of higher education within the time allowed by this subtitle.

7 (c) (1) A [discounted] REDUCED refund of the contributions made to the
8 [Program] TRUST, as determined by the Board, shall be made if:

9 (i) The beneficiary does not attend an institution of higher
10 education;

11 (ii) Benefits are not exercised under the contract within a time
12 specified in the contract; or

13 (iii) The prepaid contract is canceled by the [purchaser] ACCOUNT
14 HOLDER.

15 (2) The time that a qualified beneficiary spends in active duty as a
16 member of the United States armed forces shall be added to the time period allowed
17 to exercise the benefits under a prepaid contract before a termination under
18 paragraph (1) of this subsection.

19 18-1911.

20 The Board, [Program] TRUST, and prepaid contracts issued under this subtitle
21 are not subject to the provisions of the Insurance Article.

22 18-1912.

23 The assets and income of the [Program] TRUST are exempt from State and local
24 taxation.

25 18-1913.

26 (A) IN THIS SECTION, "PERSON" DOES NOT INCLUDE THE STATE.

27 (B) A person may not attach, execute, garnish, or otherwise seize any current
28 or future benefit under a prepaid contract or any asset of the [Program] TRUST.

29 18-1916.

30 (a) (1) The Legislative Auditor shall audit the [Program] TRUST as
31 provided under Title 2, Subtitle 12 of the State Government Article.

32 (2) The Board shall cause an audit of the [Program] TRUST to be made
33 by an outside independent auditor annually.

1 (3) The Board shall pay for the audit required under paragraph (2) of
2 this subsection.

3 (b) (1) Within 90 days after the close of each fiscal year, the Board shall
4 submit to the Governor and, subject to § 2-1246 of the State Government Article, to
5 the General Assembly a report including:

6 (i) The audit of the outside independent auditor;

7 (ii) A financial accounting of the [Program] TRUST, including:

8 1. The annual review of the comprehensive investment plan
9 which shall include:

10 A. The status of the investment program, including
11 investment income matched to projected enrollment costs under the existing prepaid
12 contracts;

13 B. The assets held in each class of investment, the amount of
14 funds held in any cash pool, the amount of funds held in fixed assets investments, and
15 the amount of funds held in equity investments;

16 C. The percentage and dollar value of assets placed with
17 outside managers;

18 D. The income produced by each class of investment; and

19 E. The income produced by each investment manager; and

20 2. A detailed account of the operating and administrative
21 budget for the [Program] TRUST, which shall include a complete list of revenue
22 sources and expenditures detailing the line item expenditures for:

23 A. Salaries, wages, and fringe benefits;

24 B. Technical and special fees;

25 C. Communication;

26 D. Travel;

27 E. Contractual services;

28 F. Supplies and materials;

29 G. Equipment;

30 H. Fixed charges; and

31 I. Other expenses.

- 1 (iii) The number of prepaid contracts entered into during the
2 previous fiscal year;
- 3 (iv) Efforts by the Board in marketing the [Program] TRUST of
4 prepaid contracts; and
- 5 (v) Any recommendations of the Board concerning the operation of
6 the [Program] TRUST.

7 (2) The Board shall make available to each [purchaser] ACCOUNT
8 HOLDER a copy of a summary of the report and the option to purchase the full report
9 at a nominal charge.

10 ~~(C) ANY QUALIFIED STATE TUITION PROGRAM ADOPTED BY THE BOARD IN
11 ACCORDANCE WITH § 18-1905.1 OF THIS SUBTITLE THAT PROVIDES FOR THE
12 ADVANCE PAYMENT OF TUITION AT ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION
13 SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION.~~

14 ~~(D) THE AUDIT REQUIRED BY SUBSECTION (A)(2) OF THIS SECTION AND THE
15 REPORT REQUIRED BY SUBSECTION (B) OF THIS SECTION MAY BE COMBINED WITH
16 ANY OTHER AUDIT OR REPORT FOR THE SAME FISCAL YEAR REQUIRED TO BE
17 SUBMITTED BY THE BOARD TO THE GOVERNOR AND THE GENERAL ASSEMBLY.~~

18 18-19A-01.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) "ACCOUNT HOLDER" MEANS THE PERSON WHO ESTABLISHED AN
21 INVESTMENT ACCOUNT ON BEHALF OF A QUALIFIED DESIGNATED BENEFICIARY.

22 (C) "Board" means the [Maryland Higher Education Investment] COLLEGE
23 SAVINGS PLANS OF MARYLAND Board established under § 18-1904 of this title.

24 [(c) "Contributor" means the person who establishes an investment account on
25 behalf of a qualified designated beneficiary.]

26 (d) "Eligible educational institution" has the meaning stated in § 529(e) of the
27 Internal Revenue Code.

28 (e) "Investment account" means an account established by [a contributor] AN
29 ACCOUNT HOLDER under this subtitle on behalf of a qualified designated beneficiary
30 for the purpose of applying distributions toward qualified higher education expenses
31 at eligible educational institutions.

32 (f) "Qualified designated beneficiary" has the meaning stated in § 529(e) of
33 the Internal Revenue Code.

34 (g) "Qualified higher education expenses" has the meaning stated in § 529(e)
35 of the Internal Revenue Code.

1 (h) "Qualified state tuition program" has the meaning stated in § 529 of the
2 Internal Revenue Code.

3 (i) "Plan" means the Maryland College Investment Plan established under
4 this subtitle.

5 18-19A-02.

6 (a) There is a Maryland College Investment Plan.

7 (b) The purpose of the Plan is to allow contributions to an investment account
8 established for the purposes of meeting the qualified higher education expenses of the
9 qualified designated beneficiary of the account.

10 (c) (1) The Board shall administer, manage, promote, and market the Plan.

11 (2) The Board shall administer the Plan in compliance with Internal
12 Revenue Service standards for qualified State tuition programs.

13 (d) The Board shall adopt procedures that the Board considers necessary to
14 carry out the provisions of this subtitle.

15 (e) The Board shall adopt procedures relating to:

16 (1) Application procedures for participation in the Plan;

17 (2) Start-up costs incurred by the State for the development of the Plan
18 with these costs to be reimbursed to the State by the Plan;

19 (3) Early withdrawals, so that there will be no major detriment to the
20 remaining [contributors] ACCOUNT HOLDERS in the Plan; and

21 (4) Transfer of funds from the Plan to other qualified State tuition
22 programs and from other qualified State tuition programs to the Plan in accordance
23 with federal law.

24 (f) At least annually, the Board shall issue to each [contributor to an
25 investment account] ACCOUNT HOLDER a statement that provides a separate
26 accounting for each qualified designated beneficiary providing the following
27 information with respect to each account:

28 (1) The beginning balance;

29 (2) Contributions to the account;

30 (3) Withdrawals from the account during the previous year; and

31 (4) Ending investment account value.

1 18-19A-04.

2 (a) A Maryland resident or a nonresident of Maryland may participate in and
3 benefit from the Plan.

4 (b) Distributions from the Plan may be used only for qualified higher
5 education expenses.

6 (c) Refunds shall be disbursed to the [contributor] ACCOUNT HOLDER of the
7 investment account.

8 18-19A-05.

9 (a) (1) The debts, contracts, and obligations of the Plan are not the
10 contracts, debts, or obligations of the State and neither the faith and credit nor taxing
11 power of the State is pledged directly or indirectly or contingently, morally or
12 otherwise, to the payment of the debts, contracts, and obligations.

13 (2) The Board cannot directly or indirectly or contingently obligate,
14 morally or otherwise, the State to levy or pledge any form of taxation whatsoever for
15 the debts and obligations of the Plan or to make any appropriation for the payment of
16 the debts and obligations of the Plan.

17 (b) Neither the State nor any eligible educational institution shall be liable for
18 any losses or shortage of funds in the event that the [contributor's] ACCOUNT
19 HOLDER'S investment account balance is insufficient to meet the tuition
20 requirements of an institution attended by the qualified designated beneficiary.

21 (c) Moneys of the Plan may not be considered moneys of the State or deposited
22 in the State Treasury.

23 (d) Moneys of the Plan may not be considered moneys of or commingled with
24 the Maryland Prepaid College Trust.

25 18-19A-05.1.

26 THE BOARD, PLAN, AND INVESTMENT ACCOUNTS ISSUED UNDER THIS
27 SUBTITLE ARE NOT SUBJECT TO THE PROVISIONS OF THE INSURANCE ARTICLE.

28 18-19A-06.1.

29 (A) IN THIS SECTION, "PERSON" DOES NOT INCLUDE THE STATE.

30 (B) A PERSON MAY NOT ATTACH, EXECUTE, GARNISH, OR OTHERWISE SEIZE
31 ANY CURRENT OR FUTURE BENEFIT UNDER AN INVESTMENT ACCOUNT OR ANY
32 ASSET OF THE PLAN.

33 18-19A-07.

34 (a) (1) The Legislative Auditor shall audit the Plan as provided under Title
35 2, Subtitle 12 of the State Government Article.

1 (2) The Board shall obtain an annual audit report from service
2 providers.

3 (b) (1) Within 90 days after the close of each fiscal year, the Board shall
4 submit to the Governor and, subject to § 2-1246 of the State Government Article, to
5 the General Assembly a report including:

6 (i) A financial accounting of the Plan, including:

7 1. An annual review of the Plan which shall include:

8 A. The status of the investment program;

9 B. The assets held in each class of investment;

10 C. The percentage and dollar value of assets placed with
11 outside managers;

12 D. The income produced by each class of investment;

13 E. The income produced by each investment manager;

14 F. The total deposits into the Plan for the past year; and

15 G. The total withdrawals from the Plan for the past year; and

16 2. A detailed account of the operating and administrative
17 budget for the Plan, which shall include a complete list of revenue sources and
18 expenditures detailing the line item expenditures for:

19 A. Salaries, wages, and fringe benefits;

20 B. Technical and special fees;

21 C. Communication;

22 D. Travel;

23 E. Contractual services;

24 F. Supplies and materials;

25 G. Equipment;

26 H. Fixed charges; and

27 I. Other expenses;

28 (ii) The number of new [contributors to investment accounts]
29 ACCOUNT HOLDERS during the previous fiscal year;

30 (iii) Efforts in marketing the Plan; and

1 (iv) Any recommendations of the Board concerning the operation of
2 the Plan.

3 (2) The Board shall make available to each [contributor to an
4 investment account] ACCOUNT HOLDER a copy of a summary of the report and the
5 option to purchase the full report at a nominal charge.

6 (C) ~~ANY QUALIFIED STATE TUITION PROGRAM ADOPTED BY THE BOARD IN
7 ACCORDANCE WITH § 18-1905.1 OF THIS TITLE THAT PROVIDES FOR THE
8 ESTABLISHMENT OF INVESTMENT ACCOUNTS FOR THE PURPOSES OF MEETING THE
9 QUALIFIED HIGHER EDUCATION EXPENSES OF A QUALIFIED DESIGNATED
10 BENEFICIARY SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION.~~

11 ~~(D)~~ THE AUDIT REQUIRED BY SUBSECTION (A)(2) OF THIS SECTION AND THE
12 REPORT REQUIRED BY SUBSECTION (B) OF THIS SECTION, AT THE BOARD'S
13 DISCRETION, MAY BE COMBINED WITH ANY OTHER AUDIT OR REPORT FOR THE SAME
14 FISCAL YEAR REQUIRED TO BE SUBMITTED BY THE BOARD TO THE GOVERNOR AND
15 THE GENERAL ASSEMBLY.

16 **Article - State Government**

17 10-616.

18 (a) Unless otherwise provided by law, a custodian shall deny inspection of a
19 public record, as provided in this section.

20 (n) (1) Subject to paragraph (2) of this subsection, a custodian shall deny
21 inspection of any record disclosing:

22 (I) the name of [a purchaser] AN ACCOUNT HOLDER or qualified
23 beneficiary of a [higher education investment] PREPAID contract under Title 18,
24 Subtitle 19 of the Education Article; AND

25 (II) THE NAME OF AN ACCOUNT HOLDER OR QUALIFIED
26 DESIGNATED BENEFICIARY OF AN INVESTMENT ACCOUNT UNDER TITLE 18,
27 SUBTITLE 19A OF THE EDUCATION ARTICLE.

28 (2) A custodian:

29 (i) shall permit inspection by a person in interest; and

30 (ii) may release information to an eligible institution [designated
31 in a higher education investment contract in accordance with regulations of the
32 Maryland Higher Education Investment Program Board.] OF HIGHER EDUCATION
33 DESIGNATED:

34 1. BY AN ACCOUNT HOLDER OF A PREPAID CONTRACT OR
35 QUALIFIED BENEFICIARY UNDER TITLE 18, SUBTITLE 19A OF THE EDUCATION
36 ARTICLE; OR

1 2. BY AN ACCOUNT HOLDER OR QUALIFIED DESIGNATED
2 BENEFICIARY UNDER TITLE 18, SUBTITLE 19A OF THE EDUCATION ARTICLE.

3 **Chapter 110 of the Acts of 1997, as amended by Chapter 494 of the Acts of**
4 **2000**

5 SECTION 5. AND BE IT FURTHER ENACTED, That the totality of the
6 marketing efforts undertaken by the [Maryland Higher Education Investment]
7 COLLEGE SAVINGS PLANS OF MARYLAND Board to market the Maryland Prepaid
8 College Trust AND THE MARYLAND COLLEGE INVESTMENT PLAN must include full
9 disclosure that the contract entered into under the provisions of this Act does not
10 guarantee that the earnings of the assets invested in the [Program] TRUST OR THE
11 PLAN will generate the difference between the projected costs of [tuition under the
12 contract] THE QUALIFIED HIGHER EDUCATION EXPENSES and the actual costs at the
13 time of enrollment.

14 **Chapter 111 of the Acts of 1997, as amended by Chapter 494 of the Acts of**
15 **2000**

16 SECTION 5. AND BE IT FURTHER ENACTED, That the totality of the
17 marketing efforts undertaken by the [Maryland Higher Education Investment]
18 COLLEGE SAVINGS PLANS OF MARYLAND Board to market the Maryland Prepaid
19 College Trust AND THE MARYLAND COLLEGE INVESTMENT PLAN must include full
20 disclosure that the contract entered into under the provisions of this Act does not
21 guarantee that the earnings of the assets invested in the [Program] TRUST OR THE
22 PLAN will generate the difference between the projected costs of [tuition under the
23 contract] THE QUALIFIED HIGHER EDUCATION EXPENSES and the actual costs at the
24 time of enrollment.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
26 construed to apply to all prepaid contracts purchased and investment accounts
27 opened before the effective date of this Act.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect July 1, 2003.