

SENATE BILL 341

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1999 Regular Session  
9lr0771

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By: **Senators Miller, Kasemeyer, and Hogan Hogan, and Middleton**  
Introduced and read first time: February 5, 1999  
Assigned to: Budget and Taxation and Economic and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 23, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Higher Education Investment Program - Revisions**

3 FOR the purpose of authorizing the use of contracts made under the Maryland Higher  
4 Education Investment Program at any eligible institution of higher education;  
5 altering the composition of the Maryland Higher Education Investment Board;  
6 altering certain requirements relating to the administration of the Program;  
7 defining certain terms; providing for the application of this Act; and generally  
8 relating to the Maryland Higher Education Investment Program.

9 BY repealing and reenacting, with amendments,  
10 Article - Education  
11 Section 18-1901  
12 Annotated Code of Maryland  
13 (1997 Replacement Volume and 1998 Supplement)  
14 (As enacted by Chapter 110 of the Acts of the General Assembly of 1997)

15 BY repealing and reenacting, with amendments,  
16 Article - Education  
17 Section 18-1902 through 18-1904, 18-1909, 18-1910, and 18-1914  
18 Annotated Code of Maryland  
19 (1997 Replacement Volume and 1998 Supplement)

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

1 **Article - Education**

2 18-1901.

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

4 (b) "Board" means the Board of the Maryland Higher Education Investment  
5 Program.

6 (c) ["Program" means the Maryland Higher Education Investment Program.]  
7 ~~"ELIGIBLE INSTITUTION" MEANS AN INSTITUTION OF HIGHER EDUCATION THAT IS~~  
8 ~~ELIGIBLE TO PARTICIPATE IN FEDERAL FINANCIAL AID PROGRAMS. "ELIGIBLE~~  
9 ~~INSTITUTION OF HIGHER EDUCATION" MEANS AN INSTITUTION OF HIGHER~~  
10 ~~EDUCATION THAT:~~

11 (1) OFFERS AN ASSOCIATE, BACHELOR, OR GRADUATE DEGREE  
12 PROGRAM; AND

13 (2) IS ELIGIBLE TO PARTICIPATE IN FEDERAL FINANCIAL AID  
14 PROGRAMS.

15 (d) "Higher education investment contract" means a contract between the  
16 Board and a purchaser under the provisions of this subtitle for the advance payment  
17 of undergraduate OR GRADUATE tuition at a fixed and guaranteed level by the  
18 purchaser for a qualified beneficiary to attend an ELIGIBLE institution of higher  
19 education [in the State], if the qualified beneficiary is admitted to the institution.

20 (e) "PROGRAM" MEANS THE MARYLAND HIGHER EDUCATION INVESTMENT  
21 PROGRAM.

22 (F) "Purchaser" means an individual who:

23 (1) Makes or undertakes the obligation to make advance payments of  
24 undergraduate OR GRADUATE tuition as provided under a higher education  
25 investment contract; and

26 (2) Except as provided in § 18-1909(b) of this subtitle, is a resident of  
27 Maryland at the time that the purchaser enters into a higher education investment  
28 contract.

29 [(f)] (G) "Qualified beneficiary" means an individual who:

30 (1) Is eligible to apply advance tuition payments to undergraduate OR  
31 GRADUATE tuition at an ELIGIBLE institution of higher education [in the State]  
32 under the provisions of this subtitle; and

33 (2) Except as provided in § 18-1909(b) of this subtitle, is a resident of the  
34 State at the time that the purchaser enters into a higher education investment  
35 contract.

1 [(g)] (H) "Tuition" means the charges imposed by an ELIGIBLE institution of  
2 higher education [in the State] for enrollment at the institution and includes  
3 registration and all fees required as a condition of enrollment.

4 18-1902.

5 It is the intent of the General Assembly to enhance the accessibility and  
6 affordability of higher education for all citizens of the State by establishing a method  
7 to provide for the prepayment of tuition at ELIGIBLE institutions of higher education  
8 [in the State].

9 18-1903.

10 (a) There is a Maryland Higher Education Investment Program.

11 (b) The purpose of the Program is to provide:

12 (1) A means for payment of the cost of tuition in advance of enrollment at  
13 [ any] AN ELIGIBLE institution of higher education [in the State]; and

14 (2) An assurance to a beneficiary who enrolls at an ELIGIBLE institution  
15 of higher education [in the State] that the Board shall make every effort to invest the  
16 advance payments so that the higher education investment contract will cover the  
17 average in-state tuition costs at public institutions of higher education in the State at  
18 the time that the benefits are exercised.

19 (c) The funds of the Program consist of:

20 (1) Payments received from higher education investment contracts made  
21 under the provisions of this subtitle;

22 (2) Bequests, endowments, or funds from any other available private  
23 source;

24 (3) Interest and income earned from the investments of the Program;  
25 and

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

28 (d) Money remaining in the Program at the end of the fiscal year shall remain  
29 in the Program and may not revert to the General Fund of the State.

30 (e) Moneys of the Program may not be considered moneys of the State and  
31 may not be deposited into the Treasury.

32 (f) (1) The debts, contracts, and obligations of the Program are not the  
33 contracts, debts, or obligations of the State and neither the faith and credit nor taxing  
34 power of the State is pledged directly or indirectly or contingently, morally or  
35 otherwise, to the payment of the debts, contracts, and obligations.

1 (2) The Board cannot directly or indirectly or contingently obligate,  
 2 morally or otherwise, the State to levy or pledge any form of taxation whatsoever for  
 3 the debts and obligations of the Program or to make any appropriation for the  
 4 payment of the debts and obligations of the Program.

5 18-1904.

6 (a) There is a Maryland Higher Education Investment Program Board.

7 (b) The Board consists of the following [seven ] NINE members:

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

9 (2) THE STATE SUPERINTENDENT OF SCHOOLS;

10 [(2)] (3) The State Treasurer;

11 [(3)] (4) The State Comptroller; and

12 [(4) Four] (5) FIVE members of the public who shall be appointed by the  
 13 Governor and shall have significant experience in finance, accounting, investment  
 14 management, or other areas that can be of assistance to the Board.

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

17 (d) (1) Except for the terms of the initial members of the Board, the term of  
 18 a public member of the Board is 4 years.

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

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

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

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

26 (e) The Governor may remove a public member for incompetence or  
 27 misconduct.

28 18-1909.

29 (a) The Board shall establish a program of higher education investment  
 30 contracts to [be known as] PROVIDE FOR THE ADVANCE PAYMENT OF TUITION AND  
 31 MANDATORY FEES AT:

32 (1) [The] A COMMUNITY college [plan];

- 1           (2)     [The university plan; and] A 4-YEAR COLLEGE;  
2           [(3)     The two plus two plan.]  
3           (3)     A UNIVERSITY; OR  
4           (4)     ANY COMBINATION OF A COMMUNITY COLLEGE, COLLEGE, OR  
5 UNIVERSITY.

6       (b)     (1)     For the purpose of entering into a higher education investment  
7 contract, either the purchaser or the qualified beneficiary must be a resident of  
8 Maryland at the time that the purchaser enters into the contract.

9           (2)     For the purposes of determining residency for the purchase of a  
10 higher education investment contract, "resident" has the meaning stated in §  
11 10-101(h) of the Tax - General Article.

12       (c)     The cost of a higher education investment contract shall be based on:

13           (1)     The average current in-state tuition costs at the time the contract is  
14 purchased at public institutions of higher education in the State;

15           (2)     The number of years expected to elapse between the purchase of a  
16 higher education investment contract and the use of the benefits of the contract; and

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

19       (d)     Each higher education investment contract made under the provisions of  
20 this subtitle shall include the following provisions:

21           (1)     The amount of each payment and the number of payments required  
22 from a purchaser;

23           (2)     The terms and conditions under which purchasers shall remit  
24 payments, including the dates of the payments;

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

26           (4)     Penalties for early withdrawal from the Program;

27           (5)     The amount and terms of any administrative fees that must be paid  
28 by the purchaser or the beneficiary;

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

31           (7)     Terms and conditions for a substitution for the qualified beneficiary  
32 originally named;

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

1           (9)     The time period during which the qualified beneficiary may claim  
2 benefits from the Program;

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

6           (11)    All other rights and obligations of the purchaser and the Program;

7           (12)    The following notice shall be printed on each contract in at least  
8 10-point type: This contract is not an obligation of the State and neither the faith and  
9 credit nor taxing power of the State is pledged directly or indirectly or contingently,  
10 morally or otherwise, to the payment of this contract. The Board cannot directly or  
11 indirectly or contingently obligate, morally or otherwise, the State to levy or pledge  
12 any form of taxation whatsoever or to make any appropriation for the payment of this  
13 contract; and

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

16   (e)     The Board shall allow the conversion of an advance payment contract plan  
17 from [a community college plan to a two plus two plan or a university plan; from a  
18 university plan to a community college plan or a two plus two plan; or from a two plus  
19 two plan to a community college plan or a university plan] AN EXISTING  
20 PURCHASER'S PLAN TO ANY AVAILABLE PLAN.

21 18-1910.

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

23           (2)     Unless authorized under regulations of the Board or under  
24 subsection (b) of this section, a refund may not exceed the amount paid into the  
25 Program by the purchaser.

26   (b)     A refund equal to the same benefits as provided by the contract, minus any  
27 amount paid out of the funds of the Program on behalf of the qualified beneficiary and  
28 for reasonable administrative charges, shall be made if the beneficiary:

29           (1)     Is awarded a scholarship OR TUITION REMISSION that covers  
30 benefits provided under the higher education investment contract; OR

31           (2)     Dies or suffers from a disability which prevents the beneficiary from  
32 attending an institution of higher education within the time allowed by this subtitle[;  
33 or

34           (3)     Attends an institution of higher education not in the State of  
35 Maryland].

36   (c)     (1)     A discounted refund of the contributions made to the Program, as  
37 determined by the Board, shall be made if:

1 (i) The beneficiary does not attend an institution of higher  
2 education;

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

5 (iii) The contract is canceled by the purchaser.

6 (2) The time that a qualified beneficiary spends in active duty as a  
7 member of the United States armed forces shall be added to the time period allowed  
8 to exercise the benefits under a higher education investment contract before a  
9 termination under paragraph (1) of this subsection.

10 18-1914.

11 (a) Nothing in this subtitle or in any higher education investment contract  
12 may be construed as a promise or guarantee by the Board of admission to, continued  
13 enrollment at, or graduation from an institution of higher education [in the State].

14 (b) The actual tuition rate charged to a qualified beneficiary shall be  
15 determined at the time of enrollment in accordance with the residency policy adopted  
16 by the governing board of the institution of higher education at which the qualified  
17 beneficiary enrolls.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
19 construed retroactively and shall be applied to and interpreted to affect all higher  
20 education contracts purchased prior to the effective date of this Act.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 1999.