

SENATE BILL 383

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Q3

2002 Regular Session
(2r1219)

ENROLLED BILL
-- Budget and Taxation/Ways and Means --

Introduced by **Senators Miller, Kasemeyer, Hogan, Hoffman, and Neall**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Higher Education Investment Program Qualified Tuition**
3 **Programs - Income Tax Treatment**

4 FOR the purpose of ~~prohibiting the Maryland Higher Education Investment Board~~
5 ~~from allowing the same purchaser to purchase more than one prepaid tuition~~
6 ~~contract for a single beneficiary in the same calendar year; authorizing the~~
7 ~~Board to allow a purchaser to purchase multiple tuition plans for the same~~
8 ~~beneficiary under a single prepaid contract and to provide for multiple payment~~
9 ~~options under a single prepaid contract; prohibiting the Board from allowing the~~
10 ~~same contributor to open more than one investment account for a single~~
11 ~~beneficiary in the same calendar year; authorizing the Board to allow a~~
12 ~~contributor to invest in multiple portfolios for the same beneficiary under a~~
13 ~~single investment account; clarifying the application of a certain Maryland~~
14 ~~income tax addition modification and certain Maryland subtraction~~
15 ~~modifications to certain amounts that qualify for certain treatment under~~
16 ~~federal income tax law relating to qualified tuition programs; clarifying the~~
17 ~~application to spouses on a joint income tax return of certain limitations under~~

1 ~~certain Maryland income tax subtraction modifications for purchases or~~
 2 ~~contributions under certain qualified tuition programs; providing for the~~
 3 ~~application of this Act; and generally relating to the Maryland income tax~~
 4 ~~treatment of certain purchases or contributions under certain qualified tuition~~
 5 ~~programs administered by the Maryland Higher Education Investment Board~~
 6 ~~altering a certain addition modification under the Maryland income tax for~~
 7 ~~certain distributions from certain qualified tuition programs; altering certain~~
 8 ~~subtraction modifications under the Maryland income tax for certain~~
 9 ~~contributions to certain qualified tuition programs; repealing a certain~~
 10 ~~Maryland income tax subtraction modification made obsolete as a result of~~
 11 ~~certain changes to the federal income tax treatment of qualified tuition~~
 12 ~~programs; providing for the application of this Act; and generally relating to the~~
 13 ~~income tax treatment of contributions to and distributions from certain~~
 14 ~~qualified tuition programs.~~

15 ~~BY repealing and reenacting, with amendments,~~
 16 ~~Article - Education~~
 17 ~~Section 18-1909(e) and 18-19A-03(e)~~
 18 ~~Annotated Code of Maryland~~
 19 ~~(2001 Replacement Volume)~~

20 BY repealing and reenacting, with amendments,
 21 Article - Tax - General
 22 Section 10-205(h) and 10-208(n) and (o)
 23 Annotated Code of Maryland
 24 (1997 Replacement Volume and 2001 Supplement)

25 BY repealing
 26 Article - Tax - General
 27 Section 10-207(s)
 28 Annotated Code of Maryland
 29 (1997 Replacement Volume and 2001 Supplement)

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

32 ~~Article - Education~~

33 ~~18-1909:~~

34 ~~(e) (1) (I) THE BOARD MAY NOT ALLOW THE SAME PURCHASER TO~~
 35 ~~PURCHASE MORE THAN ONE PREPAID CONTRACT FOR A SINGLE BENEFICIARY IN~~
 36 ~~THE SAME CALENDAR YEAR.~~

37 ~~(H) THE BOARD MAY ALLOW A PURCHASER TO PURCHASE~~
 38 ~~MULTIPLE TUITION PLANS FOR THE SAME BENEFICIARY UNDER A SINGLE PREPAID~~

1 ~~CONTRACT AND MAY PROVIDE FOR MULTIPLE PAYMENT OPTIONS UNDER A SINGLE~~
 2 ~~PREPAID CONTRACT.~~

3 (2) The Board shall allow the conversion of a prepaid contract from one
 4 tuition plan or payment option to a different tuition plan or payment option.

5 ~~18-19A-03.~~

6 (e) (1) ~~The Plan:~~

7 (i) ~~Shall be established in the form determined by the Board; and~~

8 (ii) ~~May be established as a trust to be declared by the Board.~~

9 (2) ~~The Plan may be divided into multiple investment portfolios.~~

10 (3) ~~If the Plan is divided into multiple portfolios as provided in~~
 11 ~~paragraph (2) of this subsection, the debts, liabilities, obligations, and expenses~~
 12 ~~incurred, contracted for, or otherwise existing with respect to a particular portfolio~~
 13 ~~shall be enforceable against the assets of that portfolio only and not against the assets~~
 14 ~~of the Plan generally, if:~~

15 (i) ~~Distinct records are maintained for each portfolio; and~~

16 (ii) ~~The assets associated with each portfolio are accounted for~~
 17 ~~separately from the other assets of the Plan.~~

18 (4) (I) ~~THE BOARD MAY NOT ALLOW THE SAME CONTRIBUTOR TO~~
 19 ~~OPEN MORE THAN ONE INVESTMENT ACCOUNT FOR A SINGLE BENEFICIARY IN THE~~
 20 ~~SAME CALENDAR YEAR.~~

21 (II) ~~THE BOARD MAY ALLOW A CONTRIBUTOR TO INVEST IN~~
 22 ~~MULTIPLE PORTFOLIOS FOR THE SAME BENEFICIARY UNDER A SINGLE INVESTMENT~~
 23 ~~ACCOUNT.~~

24 **Article - Tax - General**

25 10-205.

26 (h) (1) (i) ~~In this subsection the following words have the meanings~~
 27 ~~indicated.~~

28 (ii) ~~"Contributor" and "qualified designated beneficiary" have the~~
 29 ~~meanings stated in § 18-19A-01 of the Education Article.~~

30 (iii) ~~"Purchaser" and "qualified beneficiary" have the meanings~~
 31 ~~stated in § 18-1901 of the Education Article.~~

32 (iv) ~~"Qualified higher education expenses" has the meaning stated~~
 33 ~~in § 529 of the Internal Revenue Code, "QUALIFIED TUITION PROGRAM" HAS THE~~
 34 ~~MEANING STATED IN § 529 OF THE INTERNAL REVENUE CODE.~~

1 (2) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
2 addition under subsection (a) of this section includes the amount of:

3 (i) ~~any refund received in the taxable year by a purchaser under a~~
4 ~~prepaid contract in accordance with the Maryland Prepaid College Trust or a~~
5 ~~contributor under an investment account in accordance with the Maryland College~~
6 ~~Investment Plan; or~~

7 (ii) ~~any distribution received in the taxable year by a purchaser~~
8 ~~under a prepaid contract in accordance with the Maryland Prepaid College Trust or a~~
9 ~~contributor under an investment account in accordance with the Maryland College~~
10 ~~Investment Plan that is not used on behalf of the qualified beneficiary or qualified~~
11 ~~designated beneficiary for qualified higher education expenses.~~

12 (3) ~~THE ADDITION REQUIRED UNDER THIS SUBSECTION DOES NOT~~
13 ~~INCLUDE ANY AMOUNT THAT:~~

14 (I) ~~QUALIFIES FOR TREATMENT AS A TAX FREE ROLLOVER UNDER~~
15 ~~§ 529(C)(3)(C) OF THE INTERNAL REVENUE CODE; AND~~

16 (II) ~~IS TRANSFERRED TO ANOTHER QUALIFIED TUITION PROGRAM~~
17 ~~ESTABLISHED BY THIS STATE FOR THE BENEFIT OF THE QUALIFIED BENEFICIARY~~
18 ~~OR QUALIFIED DESIGNATED BENEFICIARY OR FOR THE BENEFIT OF ANOTHER~~
19 ~~BENEFICIARY WHO, WITHIN THE MEANING OF § 529 OF THE INTERNAL REVENUE~~
20 ~~CODE, IS A MEMBER OF THE FAMILY OF THE ORIGINAL QUALIFIED BENEFICIARY OR~~
21 ~~QUALIFIED DESIGNATED BENEFICIARY ANY DISTRIBUTION FROM A QUALIFIED~~
22 ~~TUITION PROGRAM OTHER THAN:~~

23 (I) A DISTRIBUTION FOR QUALIFIED HIGHER EDUCATION
24 EXPENSES, WITHIN THE MEANING OF § 529(C)(3)(B) OF THE INTERNAL REVENUE
25 CODE; OR

26 (II) A DISTRIBUTION THAT IS A ROLLOVER OR CHANGE IN
27 DESIGNATED BENEFICIARIES, WITHIN THE MEANING OF § 529(C)(3)(C) OF THE
28 INTERNAL REVENUE CODE.

29 ~~{(3)}~~ (4) The amount of the addition required under this subsection shall
30 be reduced by any amount included in the individual's federal adjusted gross income
31 as a result of the refund DISTRIBUTION.

32 ~~{(4)}~~ (5) The cumulative amount of the addition under this subsection
33 for the taxable year and all prior taxable years may not exceed THE SUM OF:

34 (I) the cumulative amount allowed as a subtraction:

35 (i) under § 10-208(n) of this subtitle for the taxable year and all
36 prior taxable years ~~for the purchaser's payments to the prepaid contract under which~~
37 ~~the refund or distribution is received; or~~ FOR CONTRIBUTIONS TO A QUALIFIED
38 PREPAID TUITION PROGRAM; AND

1 (ii) THE CUMULATIVE AMOUNT ALLOWED AS A SUBTRACTION
 2 under § 10-208(o) of this subtitle for the taxable year and all prior taxable years ~~for~~
 3 ~~contributions made by a contributor to an investment account under which the refund~~
 4 ~~or distribution is received~~ FOR CONTRIBUTIONS TO A QUALIFIED HIGHER
 5 EDUCATION INVESTMENT PROGRAM.

6 10-207.

7 [(s) (1) (i) In this subsection the following words have the meanings
 8 indicated.

9 (ii) "Qualified beneficiary" has the meaning stated in § 18-1901 of
 10 the Education Article.

11 (iii) "Qualified designated beneficiary" has the meaning stated in §
 12 18-19A-01 of the Education Article.

13 (iv) "Qualified higher education expenses" has the meaning stated
 14 in § 529 of the Internal Revenue Code.

15 (2) Except as provided in paragraph (3) of this subsection, the
 16 subtraction under subsection (a) of this section includes any amount included in
 17 federal adjusted gross income as a result of a distribution to:

18 (i) a qualified beneficiary pursuant to a prepaid contract under the
 19 Maryland Prepaid College Trust; or

20 (ii) a qualified designated beneficiary from an investment account
 21 under the Maryland College Investment Plan.

22 (3) The subtraction under paragraph (2) of this subsection does not apply
 23 to:

24 (i) a refund under the Maryland Prepaid College Trust or the
 25 Maryland College Investment Plan; or

26 (ii) a distribution that is not used by the qualified beneficiary or
 27 qualified designated beneficiary for qualified higher education expenses.]

28 10-208.

29 (n) (1) (i) In this subsection the following words have the meanings
 30 indicated.

31 (ii) ~~"Purchaser" has the meaning stated in § 18-1901 of the~~
 32 ~~Education Article.~~

33 (II) "CONTRIBUTOR" MEANS A CONTRIBUTOR WITHIN THE
 34 MEANING OF § 529 OF THE INTERNAL REVENUE CODE.

1 (III) "DESIGNATED BENEFICIARY" HAS THE MEANING STATED IN §
 2 529 OF THE INTERNAL REVENUE CODE.

3 ~~(iii)~~ (IV) "Qualified higher education expenses" has the meaning
 4 stated in § 529 of the Internal Revenue Code.

5 (V) "QUALIFIED PREPAID TUITION PROGRAM" MEANS A QUALIFIED
 6 TUITION PROGRAM UNDER WHICH AN INDIVIDUAL MAY PURCHASE TUITION
 7 CREDITS OR CERTIFICATES ON BEHALF OF A DESIGNATED BENEFICIARY WHICH
 8 ENTITLE THE DESIGNATED BENEFICIARY TO THE WAIVER OR PAYMENT OF
 9 QUALIFIED HIGHER EDUCATION EXPENSES OF THE DESIGNATED BENEFICIARY.

10 (VI) "QUALIFIED TUITION PROGRAM" HAS THE MEANING STATED IN
 11 § 529 OF THE INTERNAL REVENUE CODE.

12 (2) (I) The subtraction under subsection (a) of this section includes the
 13 amount of ~~advance payments of qualified higher education expenses made by a~~
 14 ~~purchaser during the taxable year as provided under a prepaid contract in accordance~~
 15 ~~with the Maryland Prepaid College Trust~~ CONTRIBUTIONS MADE BY A CONTRIBUTOR
 16 TO A QUALIFIED PREPAID TUITION PROGRAM ON BEHALF OF A DESIGNATED
 17 BENEFICIARY.

18 (II) THE SUBTRACTION UNDER THIS SUBSECTION DOES NOT
 19 INCLUDE ANY AMOUNT THAT IS A TAX-FREE ROLLOVER OR CHANGE IN DESIGNATED
 20 BENEFICIARIES UNDER § 529(C)(3)(C) OF THE INTERNAL REVENUE CODE FROM
 21 ANOTHER QUALIFIED TUITION PROGRAM, AS DEFINED IN § 529 OF THE INTERNAL
 22 REVENUE CODE.

23 (3) (I) ~~(H)~~ Subject to paragraph (4) of this subsection, ~~for each~~
 24 ~~prepaid contract~~ FOR EACH CONTRIBUTOR FOR EACH DESIGNATED BENEFICIARY,
 25 the subtraction under paragraph (2) of this subsection may not exceed \$2,500 for any
 26 taxable year.

27 (II) FOR PURPOSES OF THE TAX LIMITATION UNDER THIS
 28 PARAGRAPH, EACH SPOUSE ON A JOINT INCOME TAX RETURN SHALL BE TREATED
 29 SEPARATELY.

30 (H) FOR PURPOSES OF THE LIMITATION UNDER THIS PARAGRAPH,
 31 EACH SPOUSE ON A JOINT INCOME TAX RETURN SHALL BE TREATED SEPARATELY.

32 (4) The amount disallowed as a subtraction under this subsection for any
 33 taxable year as a result of the limitation under paragraph (3) of this subsection shall
 34 be treated as having been made in the next succeeding taxable year and, subject to
 35 the \$2,500 annual limitation ~~for each prepaid contract~~, may be carried over to
 36 succeeding taxable years until the full amount of the ~~advance payments~~
 37 CONTRIBUTIONS has been allowed as a subtraction.

38 (o) ~~(I)~~ In this subsection, "investment account", "qualified designated
 39 beneficiary", "contributor", and "qualified higher education expenses" have the
 40 meanings stated in § 18-19A-01 of the Education Article.

1 (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
2 MEANINGS INDICATED.

3 (II) "CONTRIBUTOR" MEANS A CONTRIBUTOR WITHIN THE
4 MEANING OF § 529 OF THE INTERNAL REVENUE CODE.

5 (III) "DESIGNATED BENEFICIARY" HAS THE MEANING STATED IN §
6 529 OF THE INTERNAL REVENUE CODE.

7 (IV) "QUALIFIED HIGHER EDUCATION EXPENSES" HAS THE
8 MEANING STATED IN § 529 OF THE INTERNAL REVENUE CODE.

9 (V) "QUALIFIED HIGHER EDUCATION INVESTMENT PROGRAM"
10 MEANS A QUALIFIED TUITION PROGRAM UNDER WHICH AN INDIVIDUAL MAY MAKE
11 CONTRIBUTIONS TO AN ACCOUNT WHICH IS ESTABLISHED FOR THE PURPOSE OF
12 MEETING THE QUALIFIED HIGHER EDUCATION EXPENSES OF THE DESIGNATED
13 BENEFICIARY OF THE ACCOUNT.

14 (VI) "QUALIFIED TUITION PROGRAM" HAS THE MEANING STATED IN
15 § 529 OF THE INTERNAL REVENUE CODE.

16 (2) (I) The subtraction under subsection (a) of this section includes the
17 amount ~~contributed by a contributor during the taxable year to an investment~~
18 ~~account~~ OF CONTRIBUTIONS MADE BY A CONTRIBUTOR TO A QUALIFIED HIGHER
19 EDUCATION INVESTMENT PROGRAM ON BEHALF OF A DESIGNATED BENEFICIARY.

20 (II) THE SUBTRACTION UNDER THIS SUBSECTION DOES NOT
21 INCLUDE ANY AMOUNT THAT IS A TAX-FREE ROLLOVER OR CHANGE IN DESIGNATED
22 BENEFICIARIES UNDER § 529(C)(3)(C) OF THE INTERNAL REVENUE CODE FROM
23 ANOTHER QUALIFIED TUITION PROGRAM, AS DEFINED IN § 529 OF THE INTERNAL
24 REVENUE CODE.

25 (3) (I) ~~(4)~~ Subject to paragraph (4) of this subsection, ~~for each~~
26 ~~investment account~~ FOR EACH CONTRIBUTOR FOR EACH DESIGNATED BENEFICIARY,
27 the subtraction under paragraph (2) of this subsection may not exceed \$2,500 for any
28 taxable year.

29 (II) FOR PURPOSES OF THE TAX LIMITATION UNDER THIS
30 PARAGRAPH, EACH SPOUSE ON A JOINT INCOME TAX RETURN SHALL BE TREATED
31 SEPARATELY.

32 (II) ~~FOR PURPOSES OF THE LIMITATION UNDER THIS PARAGRAPH,~~
33 ~~EACH SPOUSE ON A JOINT INCOME TAX RETURN SHALL BE TREATED SEPARATELY.~~

34 (4) The amount disallowed as a subtraction under this subsection for any
35 taxable year as a result of the limitation under paragraph (3) of this subsection shall
36 be treated as having been contributed in the next 10 succeeding taxable years and,
37 subject to the \$2,500 annual limitation ~~for each investment account~~, may be carried
38 over to succeeding taxable years as a subtraction.

1 ~~SECTION 2. AND BE IT FURTHER ENACTED, That, except as otherwise~~
2 ~~provided in this section, this Act shall be applicable to all taxable years beginning~~
3 ~~after December 31, 2001. The provisions of § 18-1909 of the Education Article as~~
4 ~~amended by this Act do not apply to prepaid tuition contracts purchased during the~~
5 ~~December 31, 2001 to March 22, 2002 enrollment period for the Maryland Prepaid~~
6 ~~College Trust. Multiple investment accounts opened on or after January 1, 2002 by~~
7 ~~the same contributor for a single beneficiary shall be treated as multiple portfolios~~
8 ~~within one investment account for purposes of the subtraction modification under §~~
9 ~~10-208(e) of the Tax—General Article.~~

10 SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 2002 and shall be applicable to all taxable years beginning after
12 December 31, 2001.