

SENATE BILL 383

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2002 Regular Session
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By: **Senators Miller, Kasemeyer, Hogan, Hoffman, and Neall**
Introduced and read first time: January 29, 2002
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Higher Education Investment Program - Income Tax Treatment**

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

22 BY repealing and reenacting, with amendments,
23 Article - Education
24 Section 18-1909(e) and 18-19A-03(e)
25 Annotated Code of Maryland
26 (2001 Replacement Volume)

27 BY repealing and reenacting, with amendments,
28 Article - Tax - General
29 Section 10-205(h) and 10-208(n) and (o)
30 Annotated Code of Maryland
31 (1997 Replacement Volume and 2001 Supplement)

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

3 **Article - Education**

4 18-1909.

5 (e) (1) (I) THE BOARD MAY NOT ALLOW THE SAME PURCHASER TO
6 PURCHASE MORE THAN ONE PREPAID CONTRACT FOR A SINGLE BENEFICIARY IN
7 THE SAME CALENDAR YEAR.

8 (II) THE BOARD MAY ALLOW A PURCHASER TO PURCHASE
9 MULTIPLE TUITION PLANS FOR THE SAME BENEFICIARY UNDER A SINGLE PREPAID
10 CONTRACT AND MAY PROVIDE FOR MULTIPLE PAYMENT OPTIONS UNDER A SINGLE
11 PREPAID CONTRACT.

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

14 18-19A-03.

15 (e) (1) The Plan:

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

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

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

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

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

25 (ii) The assets associated with each portfolio are accounted for
26 separately from the other assets of the Plan.

27 (4) (I) THE BOARD MAY NOT ALLOW THE SAME CONTRIBUTOR TO
28 OPEN MORE THAN ONE INVESTMENT ACCOUNT FOR A SINGLE BENEFICIARY IN THE
29 SAME CALENDAR YEAR.

30 (II) THE BOARD MAY ALLOW A CONTRIBUTOR TO INVEST IN
31 MULTIPLE PORTFOLIOS FOR THE SAME BENEFICIARY UNDER A SINGLE INVESTMENT
32 ACCOUNT.

Article - Tax - General

10-205.

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

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

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

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

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

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

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

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

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

(II) IS TRANSFERRED TO ANOTHER QUALIFIED TUITION PROGRAM ESTABLISHED BY THIS STATE FOR THE BENEFIT OF THE QUALIFIED BENEFICIARY OR QUALIFIED DESIGNATED BENEFICIARY OR FOR THE BENEFIT OF ANOTHER BENEFICIARY WHO, WITHIN THE MEANING OF § 529 OF THE INTERNAL REVENUE CODE, IS A MEMBER OF THE FAMILY OF THE ORIGINAL QUALIFIED BENEFICIARY OR QUALIFIED DESIGNATED BENEFICIARY.

[(3)] (4) The amount of the addition required under this subsection shall be reduced by any amount included in the individual's federal adjusted gross income as a result of the refund.

[(4)] (5) The cumulative amount of the addition under this subsection for the taxable year and all prior taxable years may not exceed the cumulative amount allowed as a subtraction:

1 (i) under § 10-208(n) of this subtitle for the taxable year and all
2 prior taxable years for the purchaser's payments to the prepaid contract under which
3 the refund or distribution is received; or

4 (ii) under § 10-208(o) of this subtitle for the taxable year and all
5 prior taxable years for contributions made by a contributor to an investment account
6 under which the refund or distribution is received.

7 10-208.

8 (n) (1) (i) In this subsection the following words have the meanings
9 indicated.

10 (ii) "Purchaser" has the meaning stated in § 18-1901 of the
11 Education Article.

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

14 (2) (I) The subtraction under subsection (a) of this section includes the
15 amount of advance payments of qualified higher education expenses made by a
16 purchaser during the taxable year as provided under a prepaid contract in accordance
17 with the Maryland Prepaid College Trust.

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

22 (3) (I) Subject to paragraph (4) of this subsection, for each prepaid
23 contract, the subtraction under paragraph (2) of this subsection may not exceed
24 \$2,500 for any taxable year.

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

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

33 (o) (1) In this subsection, "investment account", "qualified designated
34 beneficiary", "contributor", and "qualified higher education expenses" have the
35 meanings stated in § 18-19A-01 of the Education Article.

36 (2) (I) The subtraction under subsection (a) of this section includes the
37 amount contributed by a contributor during the taxable year to an investment
38 account.

1 (II) THE SUBTRACTION UNDER THIS SUBSECTION DOES NOT
2 INCLUDE ANY AMOUNT THAT IS A TAX-FREE ROLLOVER UNDER § 529(C)(3)(C) OF THE
3 INTERNAL REVENUE CODE FROM ANOTHER QUALIFIED TUITION PROGRAM, AS
4 DEFINED IN § 529 OF THE INTERNAL REVENUE CODE.

5 (3) (I) Subject to paragraph (4) of this subsection, for each investment
6 account, the subtraction under paragraph (2) of this subsection may not exceed \$2,500
7 for any taxable year.

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That, except as otherwise
16 provided in this section, this Act shall be applicable to all taxable years beginning
17 after December 31, 2001. The provisions of § 18-1909 of the Education Article as
18 amended by this Act do not apply to prepaid tuition contracts purchased during the
19 December 31, 2001 to March 22, 2002 enrollment period for the Maryland Prepaid
20 College Trust. Multiple investment accounts opened on or after January 1, 2002 by
21 the same contributor for a single beneficiary shall be treated as multiple portfolios
22 within one investment account for purposes of the subtraction modification under §
23 10-208(o) of the Tax - General Article.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 July 1, 2002.