

State of Arizona
Senate
Forty-third Legislature
First Regular Session
1997

SENATE BILL 1055

AN ACT

AMENDING TITLE 15, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; AMENDING SECTION 43-1022, ARIZONA REVISED STATUTES; RELATING TO A COLLEGE SAVINGS PLAN.

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

2 Section 1. Title 15, chapter 14, Arizona Revised Statutes, is amended
3 by adding article 7, to read:

4 ARTICLE 7. COLLEGE SAVINGS PLAN

5 15-1871. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ACCOUNT" MEANS AN INDIVIDUAL TRUST ACCOUNT OR SAVINGS ACCOUNT
8 ESTABLISHED AS PRESCRIBED IN THIS ARTICLE.

9 2. "ACCOUNT OWNER" MEANS THE PERSON DESIGNATED AT THE TIME AN ACCOUNT
10 IS OPENED AS HAVING THE RIGHT TO WITHDRAW MONIES FROM THE ACCOUNT BEFORE THE
11 ACCOUNT IS DISBURSED TO OR FOR THE BENEFIT OF THE DESIGNATED BENEFICIARY.

12 3. "COMMISSION" MEANS THE COMMISSION FOR POSTSECONDARY EDUCATION
13 ESTABLISHED BY SECTION 15-1851.

14 4. "COMMITTEE" MEANS THE FAMILY COLLEGE SAVINGS PROGRAM OVERSIGHT
15 COMMITTEE.

16 5. "DESIGNATED BENEFICIARY", EXCEPT AS PROVIDED IN SECTION 15-1875,
17 SUBSECTIONS U AND V, MEANS, WITH RESPECT TO AN ACCOUNT, THE PERSON DESIGNATED
18 AT THE TIME THE ACCOUNT IS OPENED AS THE PERSON WHOSE HIGHER EDUCATION
19 EXPENSES ARE EXPECTED TO BE PAID FROM THE ACCOUNT OR, IF THIS DESIGNATED
20 BENEFICIARY IS REPLACED IN ACCORDANCE WITH SECTION 15-1875, SUBSECTIONS E,
21 F AND G, THE REPLACEMENT BENEFICIARY.

22 6. "FINANCIAL INSTITUTION" MEANS ANY BANK, COMMERCIAL BANK, NATIONAL
23 BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, AN INSURANCE

1 COMPANY, BROKERAGE FIRM OR OTHER SIMILAR ENTITY THAT IS AUTHORIZED TO DO
2 BUSINESS IN THIS STATE.

3 7. "HIGHER EDUCATION INSTITUTION" MEANS ANY OF THE FOLLOWING:

4 (a) AN INSTITUTION DESCRIBED IN THE HIGHER EDUCATION ACT OF 1965 (P.L.
5 89-329; 79 STAT. 1219; 20 UNITED STATES CODE SECTIONS 1001 THROUGH 1150).

6 (b) AN AREA VOCATIONAL EDUCATIONAL SCHOOL AS DEFINED IN SECTION
7 521(3), SUBPARAGRAPH (C) OR (D) OF THE CARL D. PERKINS VOCATIONAL EDUCATION
8 ACT (P.L. 98-524; 98 STAT. 2435; 20 UNITED STATES CODE SECTIONS 2301 THROUGH
9 2471).

10 (c) AN INSTITUTION LICENSED BY THE STATE BOARD FOR PRIVATE
11 POSTSECONDARY EDUCATION.

12 8. "MEMBER OF THE FAMILY" MEANS EITHER OF THE FOLLOWING:

13 (a) AN ANCESTOR OF A PERSON.

14 (b) THE SPOUSE OF A PERSON.

15 (c) A LINEAL DESCENDANT, INCLUDING A LEGALLY ADOPTED CHILD, OF A
16 PERSON, OF A PERSON'S SPOUSE OR OF A PARENT OF A PERSON.

17 (d) THE SPOUSE OF ANY LINEAL DESCENDANT DESCRIBED IN SUBDIVISION (c)
18 OF THIS PARAGRAPH.

19 9. "NONQUALIFIED WITHDRAWAL" MEANS A WITHDRAWAL FROM AN ACCOUNT OTHER
20 THAN ONE OF THE FOLLOWING:

21 (a) A QUALIFIED WITHDRAWAL,

22 (b) A WITHDRAWAL MADE AS THE RESULT OF THE DEATH OR DISABILITY OF THE
23 DESIGNATED BENEFICIARY OF AN ACCOUNT,

24 (c) WITHDRAWAL THAT IS MADE ON THE ACCOUNT OF A SCHOLARSHIP, OR THE
25 ALLOWANCE OR PAYMENT DESCRIBED IN SECTION 135(d)(1)(B) OR (C) OF THE INTERNAL
26 REVENUE CODE, AND THAT IS RECEIVED BY THE DESIGNATED BENEFICIARY, BUT ONLY
27 TO THE EXTENT OF THE AMOUNT OF THIS SCHOLARSHIP, ALLOWANCE OR PAYMENT.

28 (d) A ROLLOVER OR CHANGE OF DESIGNATED BENEFICIARY.

29 10. "PROGRAM" MEANS THE FAMILY COLLEGE SAVINGS PROGRAM ESTABLISHED
30 UNDER THIS ARTICLE.

31 11. "QUALIFIED HIGHER EDUCATION EXPENSES" MEANS TUITION, FEES, BOOKS,
32 SUPPLIES AND EQUIPMENT REQUIRED FOR ENROLLMENT OR ATTENDANCE OF A DESIGNATED
33 BENEFICIARY AT A HIGHER EDUCATION INSTITUTION.

34 12. "QUALIFIED WITHDRAWAL" MEANS A WITHDRAWAL FROM AN ACCOUNT TO PAY
35 THE QUALIFIED HIGHER EDUCATION EXPENSES OF THE DESIGNATED BENEFICIARY OF THE
36 ACCOUNT, BUT ONLY IF THE WITHDRAWAL IS MADE IN ACCORDANCE WITH THIS ARTICLE.

37 15-1872. Family college savings program oversight committee;
38 membership; powers and duties

39 A. THE FAMILY COLLEGE SAVINGS PROGRAM OVERSIGHT COMMITTEE IS
40 ESTABLISHED IN THE COMMISSION FOR POSTSECONDARY EDUCATION. THE COMMITTEE
41 CONSISTS OF THE FOLLOWING MEMBERS:

42 1. THE DIRECTOR OF THE DEPARTMENT OF INSURANCE OR THE DIRECTOR'S
43 DESIGNEE.

1 2. THE DIRECTOR OF THE DEPARTMENT OF BANKING OR THE DIRECTOR'S
2 DESIGNEE.

3 3. THE STATE TREASURER OR THE STATE TREASURER'S DESIGNEE.

4 4. THE DIRECTOR OF THE SECURITIES DIVISION OF THE ARIZONA CORPORATION
5 COMMISSION OR THE DIRECTOR'S DESIGNEE.

6 5. THE PRESIDENT OF THE ARIZONA BOARD OF REGENTS OR THE PRESIDENT'S
7 DESIGNEE.

8 6. THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF DIRECTORS FOR
9 COMMUNITY COLLEGES OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

10 7. THE CHAIRPERSON OF THE STATE BOARD FOR PRIVATE POSTSECONDARY
11 EDUCATION OR THE CHAIRPERSON'S DESIGNEE.

12 8. THREE MEMBERS OF THE GENERAL PUBLIC, EACH OF WHOM POSSESSES
13 KNOWLEDGE, SKILL AND EXPERIENCE IN ACCOUNTING, RISK MANAGEMENT OR INVESTMENT
14 MANAGEMENT OR AS AN ACTUARY. THE GOVERNOR SHALL APPOINT THESE MEMBERS TO
15 SERVE STAGGERED FOUR YEAR TERMS PURSUANT TO SECTION 38-211. THE INITIAL
16 MEMBERS APPOINTED PURSUANT TO THIS PARAGRAPH SHALL ASSIGN THEMSELVES BY LOT
17 TO SERVE TWO, THREE AND FOUR YEAR TERMS. ALL SUBSEQUENT MEMBERS APPOINTED
18 PURSUANT TO THIS PARAGRAPH SERVE FOUR YEAR TERMS. THE CHAIRPERSON SHALL
19 NOTIFY THE GOVERNOR'S OFFICE ON APPOINTMENTS OF THESE TERMS.

20 B. THE COMMISSION SHALL SELECT A CHAIRPERSON AND A VICE-CHAIRPERSON
21 FROM AMONG THE COMMITTEE'S MEMBERSHIP. A MAJORITY OF THE MEMBERSHIP
22 CONSTITUTES A QUORUM FOR THE TRANSACTION OF BUSINESS. THE COMMITTEE SHALL
23 MEET AT LEAST ONCE EACH CALENDAR QUARTER. THE CHAIRPERSON MAY CALL
24 ADDITIONAL MEETINGS.

25 C. MEMBERS OF THE FAMILY COLLEGE SAVINGS PROGRAM OVERSIGHT COMMITTEE
26 APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPH 8 OF THIS SECTION ARE ELIGIBLE
27 TO RECEIVE COMPENSATION AS DETERMINED PURSUANT TO SECTION 38-611 FOR EACH DAY
28 OF ATTENDANCE AT COMMITTEE MEETINGS, EXCEPT THAT THE COMPENSATION OF ANY
29 MEMBER SHALL NOT EXCEED FIVE HUNDRED DOLLARS IN ANY YEAR. THE COMMISSION
30 SHALL PAY COMPENSATION PURSUANT TO THIS SUBSECTION FROM MONIES OF THE
31 COMMISSION.

32 D. THE COMMITTEE SHALL RECOMMEND FINANCIAL INSTITUTIONS FOR APPROVAL
33 BY THE COMMISSION TO ACT AS THE DEPOSITORIES AND MANAGERS OF FAMILY COLLEGE
34 SAVINGS ACCOUNTS PURSUANT TO SECTION 15-1874.

35 E. THE COMMITTEE MAY SUBMIT PROPOSED RULES TO THE COMMISSION TO ASSIST
36 IN THE IMPLEMENTATION AND ADMINISTRATION OF THIS ARTICLE.

37 F. MEMBERS OF THE COMMITTEE ARE IMMUNE FROM PERSONAL LIABILITY WITH
38 RESPECT TO ALL ACTIONS THAT ARE TAKEN IN GOOD FAITH AND WITHIN THE SCOPE OF
39 THE COMMITTEE'S AUTHORITY.

40 15-1873. Commission for postsecondary education; family college
41 savings program; powers and duties

42 THE COMMISSION SHALL:

43 1. DEVELOP AND IMPLEMENT THE PROGRAM IN A MANNER CONSISTENT WITH THIS
44 ARTICLE THROUGH THE ADOPTION OF RULES, GUIDELINES AND PROCEDURES.

1 2. RETAIN PROFESSIONAL SERVICES, IF NECESSARY, INCLUDING ACCOUNTANTS,
2 AUDITORS, CONSULTANTS AND OTHER EXPERTS.

3 3. SEEK RULINGS AND OTHER GUIDANCE FROM THE UNITED STATES DEPARTMENT
4 OF THE TREASURY AND THE INTERNAL REVENUE SERVICE RELATING TO THE PROGRAM.

5 4. MAKE CHANGES TO THE PROGRAM REQUIRED FOR THE PARTICIPANTS IN THE
6 PROGRAM TO OBTAIN THE FEDERAL INCOME TAX BENEFITS OR TREATMENT PROVIDED BY
7 SECTION 529 OF THE INTERNAL REVENUE CODE OF 1986.

8 5. INTERPRET, IN RULES, POLICIES, GUIDELINES AND PROCEDURES, THE
9 PROVISIONS OF THIS ARTICLE BROADLY IN LIGHT OF ITS PURPOSE AND OBJECTIVES.

10 6. CHARGE, IMPOSE AND COLLECT ADMINISTRATIVE FEES AND SERVICE CHARGES
11 IN CONNECTION WITH ANY AGREEMENT, CONTRACT OR TRANSACTION RELATING TO THE
12 PROGRAM.

13 7. SELECT THE FINANCIAL INSTITUTION OR INSTITUTIONS TO ACT AS THE
14 DEPOSITORY AND MANAGER OF THE PROGRAM IN ACCORDANCE WITH THIS ARTICLE.

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

16 A. THE COMMISSION SHALL IMPLEMENT THE PROGRAM THROUGH THE USE OF ONE
17 OR MORE FINANCIAL INSTITUTIONS TO ACT AS THE DEPOSITORIES AND MANAGERS.
18 UNDER THE PROGRAM, PERSONS MAY ESTABLISH ACCOUNTS THROUGH THE PROGRAM AT THE
19 DEPOSITORY.

20 B. THE COMMITTEE SHALL SOLICIT PROPOSALS FROM FINANCIAL INSTITUTIONS
21 TO ACT AS THE DEPOSITORIES AND MANAGERS OF THE PROGRAM. FINANCIAL
22 INSTITUTIONS THAT SUBMIT PROPOSALS MUST DESCRIBE THE FINANCIAL INSTRUMENTS
23 THAT WILL BE HELD IN ACCOUNTS.

24 C. ON THE RECOMMENDATION OF THE COMMITTEE, THE COMMISSION SHALL SELECT
25 AS PROGRAM DEPOSITORIES AND MANAGERS THE FINANCIAL INSTITUTION OR
26 INSTITUTIONS FROM AMONG BIDDING FINANCIAL INSTITUTIONS THAT DEMONSTRATE THE
27 MOST ADVANTAGEOUS COMBINATION, BOTH TO POTENTIAL PROGRAM PARTICIPANTS AND
28 THIS STATE, OF THE FOLLOWING FACTORS:

29 1. FINANCIAL STABILITY AND INTEGRITY.

30 2. THE SAFETY OF THE INVESTMENT INSTRUMENTS BEING OFFERED, TAKING INTO
31 ACCOUNT ANY INSURANCE PROVIDED WITH RESPECT TO THESE INSTRUMENTS.

32 3. THE ABILITY OF THE INVESTMENT INSTRUMENTS TO TRACK ESTIMATED COSTS
33 OF HIGHER EDUCATION AS CALCULATED BY THE COMMISSION AND PROVIDED BY THE
34 FINANCIAL INSTITUTION TO THE ACCOUNT HOLDER.

35 4. THE ABILITY OF THE FINANCIAL INSTITUTIONS, DIRECTLY OR THROUGH A
36 SUBCONTRACT, TO SATISFY RECORD KEEPING AND REPORTING REQUIREMENTS.

37 5. THE FINANCIAL INSTITUTION'S PLAN FOR PROMOTING THE PROGRAM AND THE
38 INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE PROGRAM.

39 6. THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR MAINTAINING
40 ACCOUNTS.

41 7. THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE
42 FINANCIAL INSTITUTION WILL REQUIRE AND THE WILLINGNESS OF THE FINANCIAL
43 INSTITUTION TO ACCEPT CONTRIBUTIONS THROUGH PAYROLL DEDUCTION PLANS AND OTHER
44 DEPOSIT PLANS.

1 8. ANY OTHER BENEFITS TO THIS STATE OR ITS RESIDENTS INCLUDED IN THE
2 PROPOSAL, INCLUDING AN ACCOUNT OPENING FEE PAYABLE TO THE COMMISSION BY THE
3 ACCOUNT OWNER AND AN ADDITIONAL FEE FROM THE FINANCIAL INSTITUTION FOR
4 STATEWIDE PROGRAM MARKETING BY THE COMMISSION.

5 D. THE COMMISSION SHALL ENTER INTO A CONTRACT WITH A FINANCIAL
6 INSTITUTION, OR EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, CONTRACTS
7 WITH FINANCIAL INSTITUTIONS, TO SERVE AS PROGRAM MANAGERS AND DEPOSITORIES.

8 E. THE COMMISSION MAY SELECT MORE THAN ONE FINANCIAL INSTITUTION AND
9 INVESTMENT FOR THE PROGRAM IF BOTH OF THE FOLLOWING CONDITIONS EXIST:

10 1. THE UNITED STATES INTERNAL REVENUE SERVICE HAS PROVIDED GUIDANCE
11 THAT GIVING A CONTRIBUTOR A CHOICE OF TWO INVESTMENT INSTRUMENTS UNDER A
12 STATE PLAN WILL NOT CAUSE THE PLAN TO FAIL TO QUALIFY FOR FAVORABLE TAX
13 TREATMENT UNDER SECTION 529 OF THE INTERNAL REVENUE CODE.

14 2. THE COMMISSION CONCLUDES THAT THE CHOICE OF INSTRUMENT VEHICLES IS
15 IN THE BEST INTEREST OF COLLEGE SAVERS AND WILL NOT INTERFERE WITH THE
16 PROMOTION OF THE PROGRAM.

17 F. A PROGRAM MANAGER SHALL:

18 1. TAKE ALL ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH THE
19 REQUIREMENTS OF THIS ARTICLE AND ALL ACTION NOT CONTRARY TO THIS ARTICLE OR
20 ITS CONTRACT TO MANAGE THE PROGRAM SO THAT IT IS TREATED AS A QUALIFIED STATE
21 TUITION PLAN UNDER SECTION 529 OF THE INTERNAL REVENUE CODE.

22 2. KEEP ADEQUATE RECORDS OF EACH ACCOUNT, KEEP EACH ACCOUNT SEGREGATED
23 FROM EACH OTHER ACCOUNT AND PROVIDE THE COMMISSION WITH THE INFORMATION
24 NECESSARY TO PREPARE STATEMENTS REQUIRED BY SECTION 15-1875, SUBSECTIONS R,
25 S AND T OR FILE THESE STATEMENTS ON BEHALF OF THE COMMISSION.

26 3. COMPILE AND TOTAL INFORMATION CONTAINED IN STATEMENTS REQUIRED TO
27 BE PREPARED UNDER SECTION 15-1875, SUBSECTIONS R, S AND T AND PROVIDE THESE
28 COMPILATIONS TO THE COMMISSION.

29 4. IF THERE IS MORE THAN ONE PROGRAM MANAGER, PROVIDE THE COMMISSION
30 WITH THIS INFORMATION TO ASSIST THE COMMISSION TO DETERMINE COMPLIANCE WITH
31 SECTION 15-1875, SUBSECTION Q.

32 5. PROVIDE REPRESENTATIVES OF THE COMMISSION, INCLUDING OTHER
33 CONTRACTORS OR OTHER STATE AGENCIES, ACCESS TO THE BOOKS AND RECORDS OF THE
34 PROGRAM MANAGER TO THE EXTENT NEEDED TO DETERMINE COMPLIANCE WITH THE
35 CONTRACT.

36 6. HOLD ALL ACCOUNTS IN TRUST FOR THE BENEFIT OF THIS STATE AND THE
37 ACCOUNT OWNER.

38 G. ANY CONTRACT EXECUTED BETWEEN THE COMMISSION AND A FINANCIAL
39 INSTITUTION PURSUANT TO THIS SECTION SHALL BE FOR A TERM OF AT LEAST THREE
40 YEARS AND NOT MORE THAN SEVEN YEARS.

41 H. IF A CONTRACT EXECUTED BETWEEN THE COMMISSION AND A FINANCIAL
42 INSTITUTION PURSUANT TO THIS SECTION IS NOT RENEWED, ALL OF THE FOLLOWING
43 CONDITIONS APPLY AT THE END OF THE TERM OF THE NONRENEWED CONTRACT:

1 1. ACCOUNTS PREVIOUSLY ESTABLISHED AND HELD IN INVESTMENT INSTRUMENTS
2 AT THE FINANCIAL INSTITUTION SHALL NOT BE TERMINATED.

3 2. ADDITIONAL CONTRIBUTIONS MAY BE MADE TO THE ACCOUNTS.

4 3. NO NEW ACCOUNTS MAY BE PLACED WITH THAT FINANCIAL INSTITUTION.

5 I. THE COMMISSION MAY TERMINATE A CONTRACT WITH A FINANCIAL
6 INSTITUTION AT ANY TIME FOR GOOD CAUSE ON THE RECOMMENDATION OF THE
7 COMMITTEE. IF A CONTRACT IS TERMINATED PURSUANT TO THIS SUBSECTION, THE
8 COMMISSION SHALL TAKE CUSTODY OF ACCOUNTS HELD AT THAT FINANCIAL INSTITUTION
9 AND SHALL SEEK TO PROMPTLY TRANSFER THE ACCOUNTS TO ANOTHER FINANCIAL
10 INSTITUTION THAT IS SELECTED AS A PROGRAM MANAGER AND INTO INVESTMENT
11 INSTRUMENTS AS SIMILAR TO THE ORIGINAL INVESTMENTS AS POSSIBLE.

12 15-1875. Program requirements

13 A. THE PROGRAM SHALL BE OPERATED THROUGH THE USE OF ACCOUNTS. AN
14 ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES TO SAVE TO PAY THE QUALIFIED
15 HIGHER EDUCATION EXPENSES OF A PERSON BY SATISFYING EACH OF THE FOLLOWING
16 REQUIREMENTS:

17 1. COMPLETING AN APPLICATION IN THE FORM PRESCRIBED BY THE COMMISSION.
18 THE APPLICATION SHALL INCLUDE THE FOLLOWING INFORMATION:

19 (a) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OR EMPLOYER
20 IDENTIFICATION NUMBER OF THE CONTRIBUTOR.

21 (b) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF THE ACCOUNT OWNER
22 IF THE ACCOUNT OWNER IS NOT THE CONTRIBUTOR.

23 (c) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF THE DESIGNATED
24 BENEFICIARY.

25 (d) THE CERTIFICATION RELATING TO NO EXCESS CONTRIBUTIONS REQUIRED BY
26 SUBSECTION Q.

27 (e) ANY OTHER INFORMATION THAT THE COMMISSION MAY REQUIRE.

28 2. PAYING THE ONE-TIME APPLICATION FEE ESTABLISHED BY THE COMMISSION.

29 3. MAKING THE MINIMUM CONTRIBUTION REQUIRED BY THE COMMISSION OR BY
30 OPENING AN ACCOUNT.

31 4. DESIGNATING THE TYPE OF ACCOUNT TO BE OPENED IF MORE THAN ONE TYPE
32 OF ACCOUNT IS OFFERED.

33 B. ANY PERSON MAY MAKE CONTRIBUTIONS TO AN ACCOUNT AFTER THE ACCOUNT
34 IS OPENED.

35 C. CONTRIBUTIONS TO ACCOUNTS MAY BE MADE ONLY IN CASH.

36 D. ACCOUNT OWNERS MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN
37 ACCOUNT ON SIXTY DAYS' NOTICE, OR A SHORTER PERIOD AS MAY BE AUTHORIZED BY
38 THE COMMISSION, UNDER RULES PRESCRIBED BY THE COMMISSION. THESE RULES SHALL
39 INCLUDE PROVISIONS THAT WILL GENERALLY ENABLE THE COMMISSION OR PROGRAM
40 MANAGER TO DETERMINE IF A WITHDRAWAL IS A NONQUALIFIED WITHDRAWAL OR A
41 QUALIFIED WITHDRAWAL. THE RULES MAY, BUT NEED NOT, REQUIRE ONE OR MORE OF
42 THE FOLLOWING:

1 1. ACCOUNT OWNERS SEEKING TO MAKE A QUALIFIED WITHDRAWAL OR OTHER
2 WITHDRAWAL THAT IS NOT A NONQUALIFIED WITHDRAWAL SHALL PROVIDE
3 CERTIFICATIONS, COPIES OF BILLS FOR QUALIFIED HIGHER EDUCATION EXPENSES OR
4 OTHER SUPPORTING MATERIAL.

5 2. QUALIFIED WITHDRAWALS FROM AN ACCOUNT SHALL BE MADE ONLY BY A CHECK
6 PAYABLE JOINTLY TO THE DESIGNATED BENEFICIARY AND A HIGHER EDUCATION
7 INSTITUTION.

8 3. WITHDRAWALS NOT MEETING CERTAIN REQUIREMENTS SHALL BE TREATED AS
9 NONQUALIFIED WITHDRAWALS BY THE PROGRAM MANAGER, AND IF THESE WITHDRAWALS ARE
10 NOT NONQUALIFIED WITHDRAWALS, THE ACCOUNT OWNER MUST SEEK REFUNDS OF
11 PENALTIES DIRECTLY FROM THE COMMISSION.

12 E. AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN
13 ACCOUNT TO AN INDIVIDUAL WHO IS A MEMBER OF THE FAMILY OF THE FORMER
14 DESIGNATED BENEFICIARY IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE
15 COMMISSION.

16 F. ON THE DIRECTION OF AN ACCOUNT OWNER, ALL OR A PORTION OF AN
17 ACCOUNT MAY BE TRANSFERRED TO ANOTHER ACCOUNT OF WHICH THE DESIGNATED
18 BENEFICIARY IS A MEMBER OF THE FAMILY OF THE DESIGNATED BENEFICIARY OF THE
19 TRANSFEREE ACCOUNT.

20 G. CHANGES IN DESIGNATED BENEFICIARIES AND ROLLOVERS UNDER THIS
21 SECTION ARE NOT PERMITTED IF THE CHANGES OR ROLLOVERS WOULD VIOLATE EITHER
22 OF THE FOLLOWING:

- 23 1. SUBSECTION Q, RELATING TO EXCESS CONTRIBUTIONS.
24 2. SUBSECTION N, RELATING TO INVESTMENT CHOICE.

25 H. IN THE CASE OF ANY NONQUALIFIED WITHDRAWAL FROM AN ACCOUNT, AN
26 AMOUNT EQUAL TO TEN PER CENT OF THE PORTION OF THE PROPOSED WITHDRAWAL THAT
27 WOULD CONSTITUTE INCOME AS DETERMINED IN ACCORDANCE WITH SECTION 529 OF THE
28 INTERNAL REVENUE CODE SHALL BE WITHHELD AS A PENALTY AND PAID TO THE
29 COMMISSION FOR USE IN OPERATING AND MARKETING THE PROGRAM AND FOR STATE
30 STUDENT FINANCIAL AID.

31 I. THE COMMISSION, BY RULE, SHALL INCREASE THE PERCENTAGE OF THE
32 PENALTY PRESCRIBED IN SUBSECTION H OR CHANGE THE BASIS OF THIS PENALTY IF THE
33 COMMISSION DETERMINES THAT THE AMOUNT OF THE PENALTY MUST BE INCREASED TO
34 CONSTITUTE A PENALTY THAT IS MORE THAN A DE MINIMIS PENALTY FOR PURPOSES OF
35 QUALIFYING THE PROGRAM AS A QUALIFIED STATE TUITION PROGRAM UNDER SECTION 529
36 OF THE INTERNAL REVENUE CODE.

37 J. THE COMMISSION MAY DECREASE THE PERCENTAGE OF THE PENALTY
38 PRESCRIBED IN SUBSECTION H IF IT DETERMINES THAT BOTH OF THE FOLLOWING
39 CONDITIONS EXIST:

40 1. THE PENALTY IS GREATER THAN IS REQUIRED TO CONSTITUTE A PENALTY
41 THAT IS MORE THAN A DE MINIMIS PENALTY FOR PURPOSES OF QUALIFYING THE PROGRAM
42 AS A QUALIFIED STATE TUITION PROGRAM UNDER SECTION 529 OF THE INTERNAL
43 REVENUE CODE.

1 2. THE PENALTY, WHEN COMBINED WITH OTHER REVENUE GENERATED UNDER THIS
2 ARTICLE, IS PRODUCING MORE REVENUE THAN IS REQUIRED TO COVER THE COSTS OF
3 OPERATING AND MARKETING THE PROGRAM AND TO RECOVER ANY COSTS NOT PREVIOUSLY
4 RECOVERED.

5 K. IF AN ACCOUNT OWNER MAKES A NONQUALIFIED WITHDRAWAL AND NO PENALTY
6 AMOUNT IS WITHHELD PURSUANT TO SUBSECTION H OR THE AMOUNT WITHHELD WAS LESS
7 THAN THE AMOUNT REQUIRED TO BE WITHHELD UNDER THAT SUBSECTION FOR
8 NONQUALIFIED WITHDRAWALS, THE ACCOUNT OWNER SHALL PAY THE UNPAID PORTION OF
9 THE PENALTY TO THE COMMISSION ON OR BEFORE APRIL 15 OF THE FOLLOWING TAX
10 YEAR.

11 L. EACH ACCOUNT SHALL BE MAINTAINED SEPARATELY FROM EACH OTHER ACCOUNT
12 UNDER THE PROGRAM.

13 M. SEPARATE RECORDS AND ACCOUNTING SHALL BE MAINTAINED FOR EACH
14 ACCOUNT FOR EACH DESIGNATED BENEFICIARY.

15 N. NO CONTRIBUTOR TO, ACCOUNT OWNER OF OR DESIGNATED BENEFICIARY OF
16 ANY ACCOUNT MAY DIRECT THE INVESTMENT OF ANY CONTRIBUTIONS TO AN ACCOUNT OR
17 THE EARNINGS FROM THE ACCOUNT.

18 O. IF THE COMMISSION TERMINATES THE AUTHORITY OF A FINANCIAL
19 INSTITUTION TO HOLD ACCOUNTS AND ACCOUNTS MUST BE MOVED FROM THAT FINANCIAL
20 INSTITUTION TO ANOTHER FINANCIAL INSTITUTION, THE COMMISSION SHALL SELECT THE
21 FINANCIAL INSTITUTION AND TYPE OF INVESTMENT TO WHICH THE BALANCE OF THE
22 ACCOUNT IS MOVED UNLESS THE INTERNAL REVENUE SERVICE PROVIDES GUIDANCE
23 STATING THAT ALLOWING THE ACCOUNT OWNER TO SELECT AMONG SEVERAL FINANCIAL
24 INSTITUTIONS THAT ARE THEN CONTRACTORS WOULD NOT CAUSE A PLAN TO CEASE TO BE
25 A QUALIFIED STATE TUITION PLAN.

26 P. NEITHER AN ACCOUNT OWNER NOR A DESIGNATED BENEFICIARY MAY USE AN
27 INTEREST IN AN ACCOUNT AS SECURITY FOR A LOAN. ANY PLEDGE OF AN INTEREST IN
28 AN ACCOUNT IS OF NO FORCE AND EFFECT.

29 Q. ON THE RECOMMENDATION OF THE COMMITTEE, THE COMMISSION SHALL ADOPT
30 RULES TO PREVENT CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN
31 EXCESS OF THOSE NECESSARY TO PAY THE QUALIFIED HIGHER EDUCATION EXPENSES OF
32 THE DESIGNATED BENEFICIARIES. THE RULES SHALL ADDRESS THE FOLLOWING:

33 1. PROCEDURES FOR AGGREGATING THE TOTAL BALANCES OF MULTIPLE ACCOUNTS
34 ESTABLISHED FOR A DESIGNATED BENEFICIARY.

35 2. THE ESTABLISHMENT OF A MAXIMUM TOTAL BALANCE THAT MAY BE HELD IN
36 ACCOUNTS FOR A DESIGNATED BENEFICIARY.

37 3. REQUIREMENTS THAT PERSONS WHO CONTRIBUTE TO AN ACCOUNT CERTIFY THAT
38 TO THE BEST OF THEIR KNOWLEDGE THE BALANCE IN ALL QUALIFIED STATE TUITION
39 PROGRAMS, AS DEFINED IN SECTION 529 OF THE INTERNAL REVENUE CODE, OF WHICH
40 THE DESIGNATED BENEFICIARY IS THE DESIGNATED BENEFICIARY DOES NOT EXCEED THE
41 LESSER OF:

42 (a) A MAXIMUM COLLEGE SAVINGS AMOUNT ESTABLISHED BY THE COMMISSION
43 FROM TIME TO TIME.

1 (b) THE COST IN CURRENT DOLLARS OF QUALIFIED HIGHER EDUCATION EXPENSES
2 THAT THE CONTRIBUTOR REASONABLY ANTICIPATES THE DESIGNATED BENEFICIARY WILL
3 INCUR.

4 4. REQUIREMENTS THAT ANY EXCESS BALANCES WITH RESPECT TO A DESIGNATED
5 BENEFICIARY BE PROMPTLY WITHDRAWN IN A NONQUALIFIED WITHDRAWAL OR ROLLED OVER
6 TO ANOTHER ACCOUNT IN ACCORDANCE WITH THIS SECTION.

7 R. IF THERE IS ANY DISTRIBUTION FROM AN ACCOUNT TO ANY PERSON OR FOR
8 THE BENEFIT OF ANY PERSON DURING A CALENDAR YEAR, THE DISTRIBUTION SHALL BE
9 REPORTED TO THE INTERNAL REVENUE SERVICE AND THE ACCOUNT OWNER OR THE
10 DESIGNATED BENEFICIARY TO THE EXTENT REQUIRED BY FEDERAL LAW.

11 S. THE FINANCIAL INSTITUTION SHALL PROVIDE STATEMENTS TO EACH ACCOUNT
12 OWNER AT LEAST ONCE EACH YEAR WITHIN THIRTY-ONE DAYS AFTER THE TWELVE MONTH
13 PERIOD TO WHICH THEY RELATE. THE STATEMENT SHALL IDENTIFY THE CONTRIBUTIONS
14 MADE DURING A PRECEDING TWELVE MONTH PERIOD, THE TOTAL CONTRIBUTIONS MADE
15 THROUGH THE END OF THE PERIOD, THE VALUE OF THE ACCOUNT AS OF THE END OF THIS
16 PERIOD, DISTRIBUTIONS MADE DURING THIS PERIOD AND ANY OTHER MATTERS THAT THE
17 COMMISSION REQUIRES BE REPORTED TO THE ACCOUNT OWNER.

18 T. STATEMENTS AND INFORMATION RETURNS RELATING TO ACCOUNTS SHALL BE
19 PREPARED AND FILED TO THE EXTENT REQUIRED BY FEDERAL OR STATE TAX LAW.

20 U. A STATE OR LOCAL GOVERNMENT OR ORGANIZATIONS DESCRIBED IN SECTION
21 501(c)(3) OF THE INTERNAL REVENUE CODE MAY OPEN AND BECOME THE ACCOUNT OWNER
22 OF AN ACCOUNT TO FUND SCHOLARSHIPS FOR PERSONS WHOSE IDENTITY WILL BE
23 DETERMINED AFTER AN ACCOUNT IS OPENED.

24 V. IN THE CASE OF ANY ACCOUNT DESCRIBED IN SUBSECTION U, THE
25 REQUIREMENT THAT A DESIGNATED BENEFICIARY BE DESIGNATED WHEN AN ACCOUNT IS
26 OPENED DOES NOT APPLY AND EACH PERSON WHO RECEIVES AN INTEREST IN THE ACCOUNT
27 AS A SCHOLARSHIP SHALL BE TREATED AS A DESIGNATED BENEFICIARY WITH RESPECT
28 TO THE INTEREST.

29 15-1876. Higher education expenses; exemption from income

30 NOTWITHSTANDING ANY OTHER LAW, THE AMOUNT OF ANY DISTRIBUTION TO A
31 DESIGNATED BENEFICIARY, AS DEFINED IN SECTION 529(e)(1) OF THE INTERNAL
32 REVENUE CODE, FROM AN INDIVIDUAL TRUST ACCOUNT OR SAVINGS ACCOUNT ESTABLISHED
33 UNDER THIS ARTICLE IS EXEMPT FROM TAXATION UNDER TITLE 43 BUT ONLY TO THE
34 EXTENT THAT THIS INCOME IS USED TO PAY QUALIFIED HIGHER EDUCATION EXPENSES
35 OF THE DESIGNATED BENEFICIARY.

36 15-1877. Scholarships and financial aid provisions

37 A. ANY STUDENT LOAN PROGRAM, STUDENT GRANT PROGRAM OR OTHER FINANCIAL
38 ASSISTANCE PROGRAM ESTABLISHED OR ADMINISTERED BY THIS STATE SHALL TREAT THE
39 BALANCE IN AN ACCOUNT OF WHICH THE STUDENT IS A DESIGNATED BENEFICIARY AS IF
40 IT WERE AN ASSET OF THE PARENT OF THE DESIGNATED BENEFICIARY AND NOT AS A
41 SCHOLARSHIP OR GRANT OR AS AN ASSET OF THE STUDENT FOR DETERMINING A
42 STUDENT'S OR PARENT'S INCOME, ASSETS OR FINANCIAL NEED.

1 B. SUBSECTION A APPLIES TO ANY FINANCIAL ASSISTANCE PROGRAM
2 ADMINISTERED BY A STATE SUPPORTED COLLEGE OR UNIVERSITY.

3 C. SUBSECTIONS A AND B DO NOT APPLY IF ANY OF THE FOLLOWING CONDITIONS
4 EXIST:

5 1. FEDERAL LAW REQUIRES ALL OR A PORTION OF THE AMOUNT IN AN ACCOUNT
6 TO BE TAKEN INTO ACCOUNT IN A DIFFERENT MANNER.

7 2. FEDERAL BENEFITS COULD BE LOST IF ALL OR A PORTION OF THE AMOUNT
8 IN AN ACCOUNT IS NOT TAKEN INTO ACCOUNT IN A DIFFERENT MANNER.

9 3. A SPECIFIC GRANT ESTABLISHING A FINANCIAL ASSISTANCE PROGRAM
10 REQUIRES THAT ALL OR A PORTION OF THE AMOUNT IN AN ACCOUNT BE TAKEN INTO
11 ACCOUNT.

12 15-1878. Limitations of article

13 A. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO:

14 1. GIVE ANY DESIGNATED BENEFICIARY ANY RIGHTS OR LEGAL INTEREST WITH
15 RESPECT TO AN ACCOUNT UNLESS THE DESIGNATED BENEFICIARY IS THE ACCOUNT OWNER.

16 2. GUARANTEE THAT A DESIGNATED BENEFICIARY WILL BE ADMITTED TO A
17 HIGHER EDUCATION INSTITUTION OR BE ALLOWED TO CONTINUE ENROLLMENT AT OR
18 GRADUATE FROM A HIGHER EDUCATION INSTITUTION LOCATED IN THIS STATE AFTER
19 ADMISSION.

20 3. ESTABLISH STATE RESIDENCY FOR A PERSON MERELY BECAUSE THE PERSON
21 IS A DESIGNATED BENEFICIARY.

22 4. GUARANTEE THAT AMOUNTS SAVED PURSUANT TO THE PROGRAM WILL BE
23 SUFFICIENT TO COVER THE QUALIFIED HIGHER EDUCATION EXPENSES OF A DESIGNATED
24 BENEFICIARY.

25 B. NOTHING IN THIS ARTICLE ESTABLISHES ANY OBLIGATION OF THIS STATE
26 OR ANY AGENCY OR INSTRUMENTALITY OF THIS STATE TO GUARANTEE FOR THE BENEFIT
27 OF ANY ACCOUNT OWNER, CONTRIBUTOR TO AN ACCOUNT OR DESIGNATED BENEFICIARY ANY
28 OF THE FOLLOWING:

29 1. THE RETURN OF ANY AMOUNTS CONTRIBUTED TO AN ACCOUNT.

30 2. THE RATE OF INTEREST OR OTHER RETURN ON ANY ACCOUNT.

31 3. THE PAYMENT OF INTEREST OR OTHER RETURN ON ANY ACCOUNT.

32 4. TUITION RATES OR THE COST OF RELATED HIGHER EDUCATION EXPENDITURES.

33 C. UNDER RULES ADOPTED BY THE COMMISSION, EVERY CONTRACT, APPLICATION,
34 DEPOSIT SLIP OR OTHER SIMILAR DOCUMENT THAT MAY BE USED IN CONNECTION WITH
35 A CONTRIBUTION TO AN ACCOUNT SHALL CLEARLY INDICATE THAT THE ACCOUNT IS NOT
36 INSURED BY THIS STATE AND NEITHER THE PRINCIPAL DEPOSITED NOR THE INVESTMENT
37 RETURN IS GUARANTEED BY THIS STATE.

38 15-1879. Annual report

39 THE COMMISSION SHALL SUBMIT AN ANNUAL REPORT TO THE SPEAKER OF THE
40 HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND THE GOVERNOR BY
41 FEBRUARY 1 THAT SUMMARIZES THE COMMISSION'S FINDINGS AND RECOMMENDATIONS
42 CONCERNING THE PROGRAM ESTABLISHED BY THIS ARTICLE.

43 Sec. 2. Section 43-1022, Arizona Revised Statutes, is amended to read:

44 43-1022. Subtractions from Arizona gross income

1 In computing Arizona adjusted gross income, the following amounts shall
2 be subtracted from Arizona gross income:

3 1. The amount of exemptions allowed by section 43-1023.

4 2. Benefits, annuities and pensions in an amount totalling not more
5 than two thousand five hundred dollars received from one or more of the
6 following:

7 (a) The United States government service retirement and disability
8 fund, retired or retainer pay of the uniformed services of the United States,
9 the United States foreign service retirement and disability system and any
10 other retirement system or plan established by federal law.

11 (b) The state retirement system, the state retirement plan, the
12 corrections officer retirement plan, the public safety personnel retirement
13 system, the elected officials' retirement plan, an optional retirement
14 program established by the Arizona board of regents under section 15-1628 or
15 a retirement plan established for employees of a county, city or town in this
16 state.

17 3. A beneficiary's share of trust or estate income recognized pursuant
18 to the internal revenue code.

19 4. The amount of any distributions from an individual retirement
20 account as provided for in section 408 of the internal revenue code or from
21 a qualified retirement plan of a self-employed individual as provided for in
22 section 401 of the internal revenue code to the extent that total adjustments
23 made pursuant to this paragraph in all tax years do not exceed the total of
24 all contributions made by the taxpayer to such plans prior to December 31,
25 1975, which were included in computing Arizona taxable income.

26 5. The amount of income on an installment receivable which is
27 recognized pursuant to the internal revenue code and which has already been
28 recognized on the death of the taxpayer for purposes of this title for tax
29 years ending before January 1, 1990.

30 6. Interest income received on obligations of the United States, less
31 any interest on indebtedness, or other related expenses, and deducted in
32 arriving at Arizona gross income, which were incurred or continued to
33 purchase or carry such obligations.

34 7. The amount of any income tax refunds which were received from
35 states other than Arizona and which were included as income in computing
36 federal adjusted gross income.

37 8. Annuity income included in federal adjusted gross income pursuant
38 to section 72 of the internal revenue code if the first payment with respect
39 to such annuity was received prior to December 31, 1978.

40 9. The excess of a partner's share of income required to be included
41 under section 702(a)(8) of the internal revenue code over the income required
42 to be included under chapter 14, article 2 of this title.

1 10. The excess of a partner's share of partnership losses determined
2 pursuant to chapter 14, article 2 of this title over the losses allowable
3 under section 702(a)(8) of the internal revenue code.

4 11. The amount by which the adjusted basis of property described in
5 this paragraph and computed pursuant to this title and the income tax act of
6 1954, as amended, exceeds the adjusted basis of such property computed
7 pursuant to the internal revenue code. This paragraph shall apply to all
8 property which is held for the production of income and which is sold or
9 otherwise disposed of during the taxable year other than depreciable property
10 used in a trade or business.

11 12. The amount allowed by section 43-1024 for amortization, by a
12 qualified defense contractor certified by the department of commerce under
13 section 41-1508, of a capital investment for private commercial activities.

14 13. The amount of gain included in federal adjusted gross income on the
15 sale or other disposition of a capital investment that a qualified defense
16 contractor has elected to amortize pursuant to section 43-1024.

17 14. The amount allowed by section 43-1025 for contributions during the
18 taxable year of agricultural crops to charitable organizations.

19 15. The amount of prizes or winnings less than five thousand dollars
20 in a single taxable year from any of the state lotteries established and
21 operated pursuant to title 5, chapter 5, article 1, except that all such
22 winnings before March 22, 1983, including periodic distributions from such
23 winnings made after March 22, 1983, may be subtracted.

24 16. The amount of exploration expenses determined pursuant to section
25 617 of the internal revenue code which have been deferred in a taxable year
26 ending before January 1, 1990 and for which a subtraction has not previously
27 been made. The subtraction shall be made on a ratable basis as the units of
28 produced ores or minerals discovered or explored as a result of this
29 exploration are sold.

30 17. The amount included in federal adjusted gross income pursuant to
31 section 86 of the internal revenue code, relating to taxation of social
32 security and railroad retirement benefits.

33 18. To the extent not already excluded from Arizona gross income under
34 section 112 of the internal revenue code, compensation received for active
35 service as a member of the armed forces of the United States for any month
36 during any part of which the member served in a combat zone as determined
37 under section 112 of the internal revenue code or in an area given the same
38 treatment as a combat zone for purposes of section 112 of the internal
39 revenue code.

40 19. The amount of nonreimbursed medical and hospital costs, adoption
41 counseling, legal and agency fees and other nonrecurring costs of adoption
42 not to exceed three thousand dollars. In the case of a husband and wife who
43 file separate returns, the subtraction may be taken by either taxpayer or may
44 be divided between them, but the total subtractions allowed both husband and

1 wife shall not exceed three thousand dollars. The subtraction under this
2 paragraph may be taken for the costs described in this paragraph that are
3 incurred in prior years, but the subtraction may be taken only in the year
4 during which the final adoption order is granted.

5 20. The amount authorized by section 43-1026 for the taxable year for
6 purchases of, and equipment relating to, alternative fuel vehicles.

7 21. The amount authorized by section 43-1027 for the taxable year for
8 purchases of, and nonoptional equipment directly related to the operation of,
9 qualified wood stoves, wood fireplaces or gas fired fireplaces.

10 22. With respect to an individual medical savings account established
11 pursuant to section 43-1028:

12 (a) The account holder may subtract:

13 (i) The amount of contributions made by the taxpayer's employer during
14 the taxable year to the taxpayer's individual medical savings account
15 pursuant to section 43-1028 to the extent that the employer contributions are
16 included in the taxpayer's federal adjusted gross income.

17 (ii) The amount deposited by the taxpayer in the account during the
18 taxable year.

19 (b) The account holder's employer may subtract the amount of
20 contributions made by the employer to an individual medical savings account
21 established on the employee's behalf to the extent that the contributions are
22 not deductible under the internal revenue code.

23 23. The amount by which a net operating loss carryover or capital loss
24 carryover allowable pursuant to section 43-1029, subsection F exceeds the net
25 operating loss carryover or capital loss carryover allowable pursuant to
26 section 1341(b)(5) of the internal revenue code.

27 24. ANY AMOUNT OF QUALIFIED EDUCATIONAL EXPENSES DISTRIBUTED FROM A
28 QUALIFIED STATE TUITION PROGRAM DETERMINED PURSUANT TO SECTION 529 OF THE
29 INTERNAL REVENUE CODE AND THAT IS INCLUDED IN INCOME IN COMPUTING FEDERAL
30 ADJUSTED GROSS INCOME.

31 Sec. 3. Legislative intent

32 The legislature intends to establish the family college savings program
33 in recognition that the general welfare and well-being of the state of
34 Arizona are directly related to the educational levels and skills of its
35 citizens. Therefore, a vital and valid public purpose of the state of
36 Arizona is served by the establishment and implementation of the program that
37 will encourage and make possible the attainment of an accessible, affordable
38 postsecondary education by the greatest number of citizens through a savings
39 program. The legislature further intends that the Arizona commission for
40 postsecondary education may achieve this purpose most effectively through a
41 public-private partnership using selected financial institutions to serve as
42 depositories for individual family college savings accounts.

43 Sec. 4. Emergency

1 This act is an emergency measure that is necessary to preserve the
2 public peace, health or safety and is operative immediately as provided by
3 law.