

TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

THIRD REGULAR SESSION, 2001

H. B. NO. 12-323

A BILL FOR AN ACT

To establish a college savings program for the Commonwealth of the Northern Mariana Islands; and for other purposes.

BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 **Section 1. Purpose.** It is the intent and purpose of the legislature to establish a
2 qualified higher education tuition program consistent with section 529 of the Internal
3 Revenue Code of 1986, as amended, or successor legislation, and any regulations
4 promulgated thereunder.

5 **Section 2. Title.** This Act shall be cited and shall be known as the
6 Commonwealth College Savings Program of 2001.

7 **Section 3. Definitions.** As used in this chapter, unless the context otherwise
8 requires:

9 “Account” or “college account” means an individual savings account
10 established in accordance with this Act.

11 “Account owner” means the individual who enters into a tuition savings
12 agreement pursuant to this Act and as defined under the final regulations adopted by
13 the Internal Revenue Service.

14 “Designated beneficiary” means a designated beneficiary as defined in section
15 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

16 “Financial organization” means an organization authorized to do business in the
17 Commonwealth of the Northern Mariana Islands that is:

18 (1) Certified as an insurer by the insurance commissioner;

1 (2) Licensed or chartered as a financial institution by the
2 commissioner of financial institutions;

3 (3) Chartered by an agency of the federal government;

4 (4) Subject to the jurisdiction and regulation of the securities and
5 exchange commission of the federal government; or

6 (5) Any other entity otherwise authorized to act in this state as a
7 trustee pursuant to the provisions of the Employee Retirement Income Security
8 Act of 1974, as may be amended from time to time.

9 “Institution of higher education” means an institution defined in section 529 of the
10 Internal Revenue Code of 1986, as amended, or successor legislation.

11 “Management contract” means the contract executed by the
12 Secretary of finance and a financial organization selected to act as a depository
13 and manager of the program.

14 “Member of the family” means a family member as defined in section 529 of the
15 Internal Revenue Code of 1986, as amended, or successor legislation.

16 “Nonqualified withdrawal” means a withdrawal from an account that is not:

17 (1) A qualified withdrawal;

18 (2) A withdrawal made as the result of the death or disability of the
19 designated beneficiary of an account; or

20 (3) A withdrawal made on the account of a scholarship. “Program”
21 means the college savings program. “Program manager “ means a financial
22 organization selected by the Secretary of finance to act as a depository and
23 manager of the program.

24 “Qualified higher education expenses “ means any qualified higher education
25 expense defined in section 529 of the Internal Revenue Code of 1986, as amended, or
26 successor legislation.

27 “Qualified withdrawal” means withdrawal from an account to pay the qualified
28 higher education expenses of the designated beneficiary of the account.

1 “Tuition savings agreement” means an agreement between the Secretary of
2 finance or a financial organization and the account owner.

3 **Section 4. College Savings Program.** There is established the college savings
4 program. The purpose of this program is to enable families to save for college tuition and
5 other expenses through college accounts. The program shall provide college accounts to:

6 (1) Enable residents of the CNMI and other states to benefit from the
7 tax incentive provided for qualified state tuition programs under the Internal
8 Revenue Code of 1986, as amended; and

9 (2) Attract students to public and private colleges and universities
10 within the CNMI.

11 **Section 5. Functions and Powers of Secretary of Finance.**

12 (a) The Secretary of Finance shall implement the program under the terms
13 and conditions established by this Act. The Secretary of Finance may make
14 changes to the program as required for participants to obtain the federal income
15 tax benefits or treatment provided by section 529 of the Internal Revenue Code of
16 1986, as amended, or successor legislation.

17 (b) The Secretary of Finance may implement the program through the
18 use of financial organizations as account depositories and managers. Under the
19 program, individuals may establish accounts directly with an account depository.

20 (c) The Secretary of Finance may solicit proposals from financial
21 organizations to act as depositories and managers of the program. Financial
22 organizations submitting proposals shall describe the investment instrument that
23 will be held in accounts. The Secretary of Finance shall select as program
24 depositories and managers the financial organizations, from among the bidding
25 financial organizations that demonstrate the most advantageous combination, both
26 to potential program participants and the CNMI, based on the following factors:

27 (1) The financial stability and integrity of the financial
28 organization;

1 (2) The safety of the investment instrument being offered;

2 (3) The ability of the investment instrument to track the
3 expected increasing costs of higher education;

4 (4) The ability of the financial organization to satisfy record
5 keeping and reporting requirements;

6 (5) The financial organization's plan for promoting the
7 program and the resources it is willing to allocate to promote the program;

8 (6) The fees, if any, proposed to be charged to persons for
9 opening accounts;

10 (7) The minimum initial deposit and minimum contributions
11 that the financial organization will require;

12 (8) The ability of financial organizations to accept electronic
13 withdrawals, including payroll deduction plans; and

14 (9) Other benefits to the State or its residents included in the
15 proposal, including fees payable to the State to cover expenses to operate the
16 program.

17 (d) The Secretary of Finance may enter into a contract of up to ten
18 years with a financial organization. The financial organization shall provide only
19 one type of investment instrument. The management contract shall include, at a
20 minimum, terms requiring the financial organization to:

21 (1) Take any action required to keep the program in
22 compliance with requirements of section 6 and to manage the program to
23 qualify it as a qualified state tuition plan under section 529 of the Internal
24 Revenue Code of 1986, as amended, or successor legislation;

25 (2) Keep adequate records of each account, keep each account
26 segregated from each other account, and provide the Secretary of finance
27 with the information necessary to prepare the statements required by
28 section 6;

1 (3) Compile information contained in statements required to be
2 prepared under section 6 and provide the compilations to the Secretary of
3 Finance;

4 (4) If there is more than one program manager, provide the
5 Secretary of Finance with the information necessary to determine
6 compliance with section 6;

7 (5) Provide the Secretary of Finance or designee access to the
8 books and records of the program manager to the extent needed to
9 determine compliance with the contract;

10 (6) Hold all accounts for the benefit of the account owner;

11 (7) Be audited at least annually by a firm of certified public
12 accountants selected by the program manager, and provide the results of
13 the audit to the Secretary of Finance; and

14 (8) Provide the Secretary of Finance with copies of all
15 regulatory filings and reports related to the program made by it during the
16 term of the management contract or while it is holding any accounts, other
17 than confidential filings or reports that will not become part of the
18 program. The program manager shall make available for review by the
19 director of finance with the information necessary results of any periodic
20 examination of the manager by any state or federal banking, insurance, or
21 securities commission, except to the extent that the report or reports may
22 not be disclosed under applicable law or the rules of the commission.

23 (e) The Secretary of Finance may select more than one financial
24 organization and investment instrument for the program when the Internal
25 Revenue Service has provided guidance that giving a contributor the choice of
26 two or more investment instruments under a state program will not cause the
27 program to fail to qualify for favorable tax treatment under section 529 of the
28 Internal Revenue Code of 1986, as amended, or successor legislation.

1 (f) The Secretary of Finance may require an audit to be conducted of
2 the operations and financial position of the program depository and manager at
3 any time if the director of finance has any reason to be concerned about the
4 financial position, the record-keeping practices, or the status of accounts of the
5 program depository or manager.

6 (g) During the term of any contract with a program manager, the
7 director of finance shall conduct an examination of the manager and its handling
8 of accounts. The examination shall be conducted at least biennially if the
9 manager is not otherwise subject to periodic examination by the commissioner of
10 financial institutions, the Federal Deposit Insurance Corporation, or other similar
11 entity.

12 (h) If selection of a financial organization as a program manager or
13 depository is not renewed, after the end of the term:

14 (1) Accounts previously established and held in investment
15 instruments at the financial organization may be terminated;

16 (2) Additional contributions may be made to the accounts;

17 (3) No new accounts may be placed with the financial
18 organization; and

19 (4) Existing accounts held by the depository shall remain
20 subject to all oversight and reporting requirements established by the
21 director of finance.

22 If the Secretary of Finance terminates a financial organization as a
23 program manager or depository, the Secretary of Finance shall take custody of
24 accounts held by the financial organization and shall seek to promptly transfer the
25 accounts to another financial organization that is selected as a program manager
26 or depository and into investment instruments as similar to the original
27 instruments as possible.

1 (i) The Secretary of Finance may establish a nominal fee for an
2 application for a college account.

3 (j) The Secretary of Finance may enter into contracts for the services
4 of consultants for rendering professional and technical assistance and advice and
5 any other contracts that are necessary and proper for the implementation of the
6 program.

7 (k) The Secretary of Finance may adopt rules to implement the
8 program pursuant to this Act.

9 **Section 6. Program Requirements for College Account.**

10 (a) A college account may be opened by any person who desires to save
11 money for the payment of the qualified higher education expenses on behalf of a
12 designated beneficiary. The person shall be considered the account owner as
13 defined in section 3. An application for an account shall be in the form prescribed
14 by the program and shall contain the following:

15 (1) The name, address, and social security number or employer
16 identification number of the account owner;

17 (2) The designation of a beneficiary;

18 (3) The name, address, and social security number of the
19 designated beneficiary;

20 (4) A certification relating to no excess contributions; and

21 (5) Other information as the program may require.

22 (b) Only the account owner may make contributions to the account
23 after the account is opened.

24 (c) Contributions to accounts may be made only in cash.

25 (d) An account owner may withdraw all or part of the balance from an
26 account on sixty days notice or a shorter period as may be authorized under rules
27 governing the program. The rules shall include provisions to generally enable the
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1 determination of whether a withdrawal is a nonqualified withdrawal or a qualified
 2 withdrawal. The rules may require one or more of the following:

3 (1) An account owner seeking to make a qualified withdrawal
 4 shall provide certifications of qualified higher education expenses and
 5 other information required to comply with section 529 of the Internal
 6 Revenue Code of 1986, as amended, or successor legislation;

7 (2) Withdrawals not meeting the requirements of this section
 8 shall be treated as nonqualified withdrawals by the program manager, and
 9 if the withdrawals are subsequently deemed qualified withdrawals within a
 10 reasonable time period as specified by the Secretary of Finance, the
 11 account owner shall seek any refund of
 12 penalties directly from the program.

13 (e) An account owner may change the designated beneficiary of an
 14 account to an individual who is a member of the family of the prior designated
 15 beneficiary. An account owner may transfer all or a portion of an account to
 16 another college account, the designated beneficiary of which is a member of the
 17 same family, as defined in section 529 of the Internal Revenue Code of 1986, as
 18 amended, or successor legislation, as the beneficiary of the initial account.
 19 Changes in designated beneficiaries and transfers under this section shall not be
 20 permitted if they constitute excess contributions.

21 (f) In the case of any nonqualified withdrawal from an account, an
 22 amount equal to ten per cent (or that rate imposed under final regulations adopted
 23 by the Internal Revenue Service) of the portion of the withdrawal constituting
 24 income as determined in accordance with the principles of section 529 of the
 25 Internal Revenue Code of 1986, as amended, or successor legislation, shall be
 26 withheld as a penalty and paid to the college savings program trust fund.

27 (g) The percentage of the penalty described in subsection (f) may be
 28 increased if the director of finance determines that the amount of the penalty must

1 be increased to constitute a greater than de minimis penalty for purposes of
2 qualifying the program as a qualified state tuition program under section 529 of
3 the Internal Revenue Code of 1986, as amended, or successor legislation.

4 (h) The percentage of the penalty described in subsection

5 (f) may be decreased by rule if it is determined that:

6 (1) The penalty is greater than the amount required to
7 constitute a greater than de minimis penalty for purposes of qualifying the
8 program as a qualified state

9 tuition program under section 529 of the Internal Revenue Code of
10 1986, as amended, or successor legislation; and

11 (2) The penalty, when combined with other revenue generated
12 under this chapter, is producing more revenue than is required to cover the
13 costs of operating the program and recover any prior costs not previously
14 recovered.

15 (i) If an account owner makes a nonqualified withdrawal and no
16 penalty amount is withheld pursuant to subsection (f), or the amount withheld was
17 less than the amount required to be withheld under subsection (f) for nonqualified
18 withdrawals, the account owner shall pay the unpaid portion of the penalty to the
19 program. The unpaid portion shall be paid on the date that the account owner
20 files the account owner's state or federal income tax return, whichever is filed
21 earlier, for the taxable year of the withdrawal. If the account owner does not file a
22 return, the unpaid portion shall be paid on the date that the earlier return is due.
23 Authorized extensions to filing returns may be taken into account in determining
24 the date for paying the unpaid portion.

25 (j) The program shall provide separate accounting for each designated
26 beneficiary.

1 (k) No account owner or designated beneficiary of any account shall
2 be permitted to direct the investment of any contributions to an account or the
3 earnings on it.

4 (1) Neither an account owner nor a designated beneficiary shall use an
5 interest in an account as security for a loan. Any pledge of an interest in an
6 account shall be of no force and effect.

7 (m) Contributions on behalf of a designated beneficiary in excess of those
8 necessary to provide for the qualified higher education expenses of the designated
9 beneficiary shall not be allowed. The prohibition on excess contributions shall
10 conform to section 529 of the Internal Revenue Code of 1986, as amended, or
11 successor legislation.

12 (n) If there is any distribution from an account to any individual or for
13 the benefit of any individual during a calendar year, the distribution shall be
14 reported to the Internal Revenue Service and the account owner, the designated
15 beneficiary, or the distributee, to the extent required by federal law or regulation.

16 Statements shall be provided to each account owner at least once each year
17 within sixty days after the end of the twelve-month period to which they relate.
18 The statement shall identify the contributions made during a preceding twelve-
19 month period, the total contributions made to the account through the end of the
20 period, the value of the account at the end of the period, distributions made during
21 the period, and any other information that the Secretary of Finance requires to be
22 reported to the account owner. Statements and information relating to accounts
23 shall be prepared and filed to the extent required by federal and CNMI tax law or
24 regulation.

25 (o) A local government/municipality or organization described in
26 section 501(c) (3) of the Internal Revenue Code of 1986, as amended, or
27 successor legislation, may open and become the account owner of an account to
28 fund scholarships for persons whose identify shall be determined upon

1 disbursement. Any account opened pursuant to this subsection is not required to
2 comply with the condition set forth in subsection (a) that a beneficiary be
3 designated when an account is opened, and each individual who receives an
4 interest in the account as a scholarship shall be treated as a designated beneficiary.

5 (p) An annual fee may be imposed upon the account owner for the
6 maintenance of the account.

7 (q) A qualified withdrawal may be made only after at least three
8 calendar years have elapsed from the time an account is opened.

9 (r) The program shall disclose in writing the following information to
10 each account owner and prospective account owner of a college account:

11 (1) The terms and conditions for purchasing a college account;

12 (2) Any restrictions on the substitution of beneficiaries;

13 (3) The person or entity entitled to terminate the tuition savings
14 agreement;

15 (4) The period of time during which a beneficiary may receive
16 benefits under the tuition savings agreement;

17 (5) The terms and conditions under which money may be
18 wholly or partially withdrawn from the program, including any reasonable
19 charges and fees that may be imposed for withdrawal; and

20 (6) The probable tax consequences associated with
21 contributions to and distributions from accounts.

22 **Section 7. Program Limitations of Program Account.**

23 (a) Nothing in this Act shall be construed to:

24 (1) Give any designated beneficiary any rights or legal interest
25 with respect to an account;

26 (2) Guarantee that a designated beneficiary:

27 (A) Will be admitted to an institution of higher
28 education; or

1 (B) Upon admission to an institution of higher
2 education, will be permitted to continue to attend or will receive a
3 degree from the institution;

4 (3) Create CNMI residency for an individual merely because
5 the individual is a designated beneficiary; or

6 (4) Guarantee that amounts saved pursuant to the program will
7 be sufficient to cover the qualified higher education expenses of a
8 designated beneficiary.

9 (b) Nothing in this chapter shall create or be construed to create any
10 obligation of the Secretary of Finance, the CNMI, or any agency or
11 instrumentality of the CNMI to guarantee for the benefit of any account owner or
12 designated beneficiary with respect to:

13 (1) The rate of interest or other return on any account; or

14 (2) The payment of interest or other return on any account.

15 The Secretary of Finance shall provide by rule that every contract,
16 application, deposit slip, or other similar document that may be used in
17 connection with a contribution to an account clearly indicate that the
18 account is not insured by the CNMI and neither the principal deposited nor
19 the investment return is guaranteed by the CNMI.

20 **Section 8. College Savings Program Trust Fund.**

21 (a) There is established the college savings program trust fund. The
22 Secretary of Finance shall have custody of the fund. All payments from the fund
23 shall be made in accordance with this Act.

24 (b) The fund shall consist of a trust account and an operating account.
25 The trust account shall include amounts received by the college savings program
26 pursuant to tuition savings agreements, administrative charges, fees, and all other
27 amounts received by the program from other sources, and interest and investment

1 income earned by the fund. The Secretary of Finance, from time to time, shall
2 make transfers from the trust

3 account to the operating account for the immediate payment of obligations
4 under tuition savings agreements, operating expenses, and administrative costs of
5 the college savings program. Administrative costs shall be paid out of the
6 operating account.

7 (c) The Secretary of Finance, as trustee, shall invest the assets of the
8 fund in securities that constitute legal investments under CNMI laws relating to
9 the investment of trust fund assets by trust companies, including those authorized
10 by this Act. Trust fund assets shall be kept separate and shall not be commingled
11 with other assets, except as provided in this chapter. The Secretary of Finance
12 may enter into contracts to provide for investment advice and management,
13 custodial services, and other professional services for the administration and
14 investment of the program. Administrative fees, costs, and expenses, including
15 investment fees and expenses, shall be paid from the assets of the fund.

16 (d) The Secretary of Finance shall provide for the administration of the
17 fund, including maintaining participant records and accounts, and providing
18 annual audited reports. The Secretary of Finance may enter into contracts for
19 administrative services, including reports.

20 **Section 9. Tax Reporting.** The Secretary of Finance or the program manager of
21 the college savings program, or a designee, shall file a report annually, with the Secretary
22 of taxation, setting forth the names and identification numbers of account owners,
23 designated beneficiaries, and distributees of college accounts, the amounts contributed to
24 the accounts, the amounts distributed from the accounts, and the nature of the
25 distributions as qualified withdrawals or as withdrawals other than qualified withdrawals,
26 and any other information that the CNMI Director of Revenue and Tax may require
27 regarding the taxation under this Act of amounts contributed to or withdrawn from the
28 accounts.”

1 **Section 10. College Savings Program : Exemption from Judgment.**

2 (a) Notwithstanding any existing statutes or regulations to the contrary,
3 moneys in an account created pursuant to this Act are exempt from application to
4 the satisfaction of a money judgment as follows:

5 (1) 100 per cent of moneys in an account established in
6 connection with a scholarship program;

7 (2) 100 per cent of moneys in an account where the judgment
8 debtor is the account owner and the designated beneficiary of the account
9 is a minor; and

10 (3) An amount not exceeding \$10,000 in an account, or in the
11 aggregate for more than one account, where the judgment debtor is the
12 account owner of the account or accounts.

13 (b) For the purposes of this section, the terms “account owner “ and
14 “designated beneficiary” shall have the meanings ascribed to them in section 3.

15 **Section 11. Effective Date.** This Act, upon its approval, shall apply to taxable
16 years beginning after December 31, 2001.

Date: 02/01/01

Introduced By: /s/ Rep. William “Lee” S. Torres

/s/ Rep. Jesus T. Attao

/s/ Rep. David M. Apatang

/s/ Rep. Stanley T. Torres

/s/ Rep. Heinz S. Hofschneider

/s/ Rep. Thomas B. Pangelinan

Reviewed for Legal Sufficiency by:

House Legal Counsel