

CHAPTER 97-282

Committee Substitute for Senate Bill No. 398

An act relating to postsecondary education; amending s. 240.551, F.S.; providing for rulemaking by the Florida Prepaid Postsecondary Education Expense Board; providing technical revisions; authorizing the board to construct contracts for dormitory residence; deleting the requirement that the board construct contracts for dormitory residence; defining the term "Internal Revenue Code of 1986"; deleting a requirement that the board, before entering into certain advance payment contracts, seek and disseminate certain information about the applicability of federal tax and securities laws to those contracts; providing for exemption from securities transactions laws; providing for refunds associated with the conversion of registration plans; reviving and readopting s. 240.552, F.S., relating to the Florida Prepaid Tuition Scholarship Program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (e), (h), and (j) of subsection (5), paragraphs (a) and (e) of subsection (6), and subsections (7) and (11) of section 240.551, Florida Statutes, 1996 Supplement, are amended to read:

240.551 Florida Prepaid Postsecondary Education Expense Program.—

(5) The Florida Prepaid Postsecondary Education Expense Program shall be administered by the Prepaid Postsecondary Education Expense Board as an agency of the state. The Prepaid Postsecondary Education Expense Board is hereby created as a body corporate with all the powers of a body corporate for the purposes delineated in this section. For the purposes of s. 6, Art. IV of the State Constitution, the board shall be assigned to and administratively housed within the State Board of Administration, but it shall independently exercise the powers and duties specified in this section. The board shall consist of seven members to be composed of the Insurance Commissioner and Treasurer, the Comptroller, the Chancellor of the Board of Regents, the Executive Director of the State Board of Community Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management, or investment management. Each member of the board not appointed by the Governor may name a designee to serve the board on behalf of the member; however, any designee so named shall meet the qualifications required of gubernatorial appointees to the board. Members appointed by the Governor shall serve terms of 3 years except that, in making the initial appointments, the Governor shall appoint one member to serve for 1 year, one member to serve for 2 years, and one member to serve for 3 years. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the unexpired term. Any member shall be eligible for reappointment and shall serve until a successor

qualifies. Members of the board shall serve without compensation but shall be reimbursed for per diem and travel in accordance with s. 112.061. Each member of the board shall file a full and public disclosure of his or her financial interests pursuant to s. 8, Art. II of the State Constitution and corresponding statute.

(e) The board, acting with the approval of the State Board of Administration, shall establish a comprehensive investment plan for the purposes of this section. The comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of the fund. The board may place assets of the fund in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or other investment products pursuant to the comprehensive investment plan and in such proportions as may be designated or approved under that plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws, regulations, and rules by persons who are duly authorized by applicable federal and state authorities. Within the comprehensive investment plan, the board may authorize investment vehicles, or products incident thereto, as may be available or offered by qualified companies or persons. A contract purchaser may not direct the investment of his or her contribution to the trust fund and a contract beneficiary may not direct the contribution made on his or her behalf to the trust fund. Board members and employees of the board are not prohibited from purchasing advance payment contracts by virtue of their fiduciary responsibilities as members of the board or official duties as employees of the board.

(h) Notwithstanding any other provision of this section, the board may adopt rules necessary to enable the program to retain its status as a "qualified state prepaid program" in order to maintain its tax exempt status or other similar status of the program, purchasers, and qualified beneficiaries under the Internal Revenue Code of 1986, as defined in s. 220.03(1). The board shall inform purchasers of changes to the tax or securities status of contracts purchased through the program. The board shall solicit answers to applicable ruling requests from the Internal Revenue Service regarding the tax status of fees paid pursuant to an advance payment contract to the purchaser or qualified beneficiary and from the Securities and Exchange Commission regarding the application of federal securities laws to the trust. The board shall make the status of such requests known before entering into an advance payment contract.

(j) The board may establish a direct-support organization which is:

1. A Florida corporation, not for profit, incorporated under the provisions of chapter 617 and approved by the Secretary of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the program.

3. An organization which the board, after review, has certified to be operating in a manner consistent with the goals of the program and in the

best interests of the state. Unless so certified, the organization may not use the name of the program.

4. Subject to an annual postaudit by an independent certified public accountant in accordance with rules promulgated by the board. The annual audit shall be submitted to the State Board of Administration Department of Insurance and the Auditor General for review. The State Board of Administration Department of Insurance and Auditor General shall have the authority to require and receive from the organization or its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and such anonymity shall be maintained in the auditor's report. Information received by the organization that is otherwise confidential or exempt by law shall retain such status. Any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

The chair of the board and the executive director shall be directors of the direct-support organization and shall jointly name three other individuals to serve as directors of the organization.

(6)(a) The board shall construct advance payment contracts for registration and may construct advance payment contracts for dormitory residence in accordance with the provisions of this section. Advance payment contracts constructed for the purposes of this section shall be exempt from the provisions of chapter 517 and the Florida Insurance Code. The board may request assistance from the Department of Legal Affairs in the development of the advance payment contracts. The contents of both such contracts shall include, but not be limited to, the following:

1. The amount of the payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary.

2. The terms and conditions under which purchasers shall remit payments, including, but not limited to, the date or dates upon which each payment shall be due.

3. Provisions for late payment charges and for default.

4. Provisions for penalty fees for withdrawals from the fund.

5. Except for an advance payment contract entered into pursuant to paragraph (5)(j), the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary.

6. The name of any person who may terminate the contract. The terms of the contract shall specify whether the contract may be terminated by the purchaser, the qualified beneficiary, a specific designated person, or any combination of these persons.

7. The terms and conditions under which a contract may be terminated, modified, or converted, the name of the person entitled to any refund due as a result of termination of the contract pursuant to such terms and conditions, and the amount of refund, if any, due to the person so named.

8. The time limitations, if any, within which the qualified beneficiary must claim his or her benefits through the program.

9. Other terms and conditions deemed by the board to be necessary or proper.

(e)1. No refund provided pursuant to subparagraph (a)7. shall exceed the amount paid into the fund by the purchaser. In the event that an advance payment contract is converted from a university to a community college registration plan, the refund amount shall be reduced by the amount transferred to a community college on behalf of the qualified beneficiary. However, refunds may exceed the amount paid into the fund in the following circumstances:

a. If the beneficiary is awarded a scholarship, the terms of which cover the benefits included in the advance payment contracts, moneys paid for the purchase of the advance payment contracts shall be returned to the purchaser in semester installments coinciding with the matriculation by the beneficiary in amounts of either the original purchase price plus 5 percent compounded interest, or the current rates at state postsecondary institutions, whichever is less.

b. In the event of the death or total disability of the beneficiary, moneys paid for the purchase of advance payment contracts shall be returned to the purchaser together with 5 percent compounded interest, or the current rates at state postsecondary institutions, whichever is less.

c. If an advance payment contract is converted from a university plan to a community college plan or a community college plus university plan, or is converted from a community college plus university plan to a community college plan, the amount refunded shall not exceed the difference between the amount paid for the original contract and the amount that would have been paid for the contract to which the plan is converted had the converted plan been purchased under the same payment plan at the time the original advance payment contract was executed ~~be the value of the original advance payment contract minus the value of the contract after the conversion.~~

2. No refund shall be authorized through an advance payment contract for any school year partially attended but not completed. For purposes of this section, a school year partially attended but not completed shall mean any one semester whereby the student is still enrolled at the conclusion of the official drop-add period, but withdraws before the end of such semester. If a beneficiary does not complete a community college plan or university plan for reasons other than specified in subparagraph 1., the purchaser shall receive a refund of the amount paid into the fund for the remaining unattended years of the advance payment contract pursuant to rules promulgated by the board.

(7) At a minimum, the board shall make advance payment contracts available for ~~two three~~ independent plans to be known as the community college plan ~~and, the university plan, and the dormitory residence plan,~~ respectively. The board may also make advance payment contracts available for a dormitory residence plan.

(a) Through the community college plan, the advance payment contract shall provide prepaid registration fees for a specified number of undergraduate semester credit hours not to exceed the average number of hours required for the conference of an associate degree. The cost of participation in the community college plan shall be based primarily on the average current and projected registration fees within the State Community College System and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by such beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. Each qualified beneficiary shall be classified as a resident for tuition purposes pursuant to s. 240.1201 regardless of his or her actual legal residence.

(b) Through the university plan, the advance payment contract shall provide prepaid registration fees for a specified number of undergraduate semester credit hours not to exceed the average number of hours required for the conference of a baccalaureate degree. The cost of participation in the university plan shall be based primarily on the current and projected registration fees within the State University System and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by such beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary fails to be admitted to a state university or chooses to attend a community college, the qualified beneficiary may convert the average number of semester credit hours required for the conference of an associate degree from a university plan to a community college plan and may retain the remaining semester credit hours in the university plan or may request a refund for prepaid credit hours in excess of the average number of semester credit hours required for the conference of an associate degree pursuant to subparagraph (6)(a)7. Each qualified beneficiary shall be classified as a resident for tuition purposes pursuant to s. 240.1201 regardless of his or her actual legal residence.

(c) Through the dormitory residence plan, the advance payment contract may ~~shall~~ provide prepaid housing fees for a maximum of 10 semesters of full-time undergraduate enrollment in a state university. ~~Dormitory residence plans are optional and may be purchased only in conjunction with a university plan.~~ Dormitory residence plans shall be purchased in increments of 2 semesters. The cost of participation in the dormitory residence plan shall be based primarily on the average current and projected housing fees within the State University System and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by such beneficiary. Qualified beneficiaries shall bear the cost of any additional elective charges

such as laundry service or long-distance telephone service. Each state university may specify the residence halls or other university-held residences eligible for inclusion in the plan. In addition, any state university may request immediate termination of a dormitory residence contract based on a violation or multiple violations of rules of the residence hall or other university-held residences. Qualified beneficiaries shall have the highest priority in the assignment of housing within university residence halls. In the event that sufficient housing is not available for all qualified beneficiaries, the board shall refund the purchaser or qualified beneficiary an amount equal to the fees charged for dormitory residence during that semester. If a qualified beneficiary fails to be admitted to a state university or chooses to attend a community college that operates one or more dormitories or residency opportunities, or has one or more dormitories or residency opportunities operated by the community college direct-support organization, the qualified beneficiary may transfer or cause to have transferred to the community college, or community college direct-support organization, the fees associated with dormitory residence. Dormitory fees transferred to the community college or community college direct-support organization may not exceed the maximum fees charged for state university dormitory residence for the purposes of this section, or the fees charged for community college or community college direct-support organization dormitories or residency opportunities, whichever is less.

(d) A qualified beneficiary may apply a community college plan, university plan, or dormitory residence plan toward any eligible independent college or university. An independent college or university which is located and chartered in Florida, is not for profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Commission of the Association of Independent Colleges and Schools, and which confers degrees as defined in s. 246.021 shall be eligible for such application. The board shall transfer or cause to have transferred to the eligible independent college or university designated by the qualified beneficiary an amount not to exceed the redemption value of the advance payment contract within a state postsecondary institution. In the event that the cost of registration or housing fees at the independent college or university is less than the corresponding fees at a state postsecondary institution, the amount transferred shall not exceed the actual cost of registration or housing fees. No transfer authorized pursuant to this paragraph shall exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary.

(e) A qualified beneficiary may apply the benefits of an advance payment contract toward an eligible out-of-state college or university. An out-of-state college or university which is not for profit, is accredited by a regional accrediting association, and which confers baccalaureate degrees shall be eligible for such application. The board shall transfer, or cause to have transferred, an amount not to exceed the redemption value of the advance payment contract or the original purchase price plus 5 percent compounded interest, whichever is less, after assessment of a reasonable transfer fee. In the event that the cost of registration or housing fees charged the qualified beneficiary at the eligible out-of-state college or university is less than this calculated amount, the amount transferred shall not exceed the actual cost

of registration or housing fees. Any remaining amount shall be transferred in subsequent semesters until the transfer value is depleted. No transfer authorized pursuant to this paragraph shall exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary.

(11) Moneys paid into or out of the fund by or on behalf of a purchaser or qualified beneficiary of an advance payment contract made under this section, which contract has not been terminated, are exempt, as provided by s. 222.22, from all claims of creditors of the purchaser or the beneficiary. Neither moneys paid into the program nor benefits accrued through the program may be pledged for the purpose of securing a loan.

Section 2. Notwithstanding section 42 of chapter 91-201, Laws of Florida, section 240.552, Florida Statutes, shall not stand repealed on October 1, 1997, as scheduled by that law, but that section is revived and readopted.

Section 3. This act shall take effect July 1, 1997.

Became a law without the Governor's approval May 31, 1997.

Filed in Office Secretary of State May 30, 1997.