

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 325

BY: WILLIAMS (Don)

AS INTRODUCED

AN ACT RELATING TO SCHOOLS; AMENDING SECTIONS 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, and 15, CHAPTER 261, O.S.L. 1988 (70 O.S. SUPP. 1990, SECTIONS 6000, 6001, 6002, 6003, 6004, 6005, 6008, 6009, 6010, 6011, 6012, and 6014), WHICH RELATE TO THE OKLAHOMA TUITION TRUST ACT; RENAMING ACT; RESTATING PURPOSES; CHANGING CERTAIN DEFINITIONS; RENAMING TRUST; CHANGING PROVISION FOR TRUST CHAIRMAN; DELETING AUTHORITY FOR DELEGATING CERTAIN FUNCTIONS AND AUTHORITY; CREATING "OKLAHOMA COLLEGE SAVINGS TRUST FUND"; PROVIDING FOR MANAGEMENT AND CONTROL OF TRUST FUND; DESIGNATING SOURCES OF TRUST PRINCIPAL; DELETING AUTHORITY FOR INVESTMENT COMMITTEE; PROVIDING FOR CERTAIN ACCRUAL OF INCOME AND INVESTMENT RETURN; PROHIBITING CERTAIN USES OF INCOME, INVESTMENT RETURN, AND PRINCIPAL; PROVIDING CERTAIN EXPENSES BE FUNDED FROM LEGISLATIVE APPROPRIATIONS; PROVIDING FOR MANNER OF DISCHARGE OF DUTIES OF TRUSTEES; REQUIRING CERTAIN PLANS AND REPORTS; DEFINING CERTAIN FIDUCIARY RELATIONSHIP; AUTHORIZING CERTAIN POWERS OF IMPLEMENTATION AND ADMINISTRATION; CHANGING CERTAIN REQUIREMENTS FOR TERMS OF CERTAIN CONTRACTS; RESTRICTING CERTAIN PARTICIPATION BY INSTITUTIONS; DELETING REQUIREMENT

FOR CERTAIN CONTRACT PROVISIONS; TERMINATING CERTAIN FUND IN THE STATE TREASURY; CHANGING CERTAIN REQUIREMENT FOR MAKING REQUESTS OF UNITED STATES INTERNAL REVENUE SERVICE; RESTATING CERTAIN AUTHORIZATION FOR OKLAHOMA INCOME TAX DEDUCTIONS AND EXCLUSIONS; REPEALING SECTIONS 7, 8, AND 14, CHAPTER 261, O.S.L. 1988, SECTION 16, CHAPTER 261, O.S.L. 1988, AS AMENDED BY SECTION 16, CHAPTER 375, O.S.L. 1989, SECTION 17, CHAPTER 261, O.S.L. 1988, AS AMENDED BY SECTION 17, CHAPTER 375, O.S.L. 1989, SECTION 18, CHAPTER 261, O.S.L. 1988, AND SECTION 19, CHAPTER 261, O.S.L. 1988, AS AMENDED BY SECTION 18, CHAPTER 375, O.S.L. 1989 (70 O.S. SUPP. 1990, SECTIONS 6006, 6007, AND 6013), WHICH RELATE TO THE OKLAHOMA TUITION TRUST ACT; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6000), is amended to read as follows:

Section 6000. ~~Sections 1 through 15~~ Section 6000 et seq. of this ~~act~~ title shall be known and may be cited as the "Oklahoma ~~Tuition~~ College Savings Trust Act".

SECTION 2. AMENDATORY Section 2, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6001), is amended to read as follows:

Section 6001. ~~A. The Legislature finds and declares the following:~~

~~1. It is an essential function of state government to forever encourage schools and the means of education;~~

~~2. It is a responsibility of state government to maintain state institutions of higher education;~~

~~3. It is an essential function of state government to encourage attendance at state institutions of higher education;~~

~~4. Tuition costs at public institutions of higher education are difficult for many to afford and are difficult to predict in order to enable individuals and families to plan;~~

~~5. It is in the best interest of the people of this state to foster public higher education in order to provide well-educated citizens;~~

~~6. It is in the best interest of the people of this state to encourage state residents desiring higher education to enroll in state institutions of higher learning;~~

~~7. Students in elementary and secondary schools tend to achieve a higher standard of performance when the payment of tuition for their higher education is secured; and~~

~~8. Providing assistance to assure the higher education of the citizens of this state is necessary and desirable for the public health, safety and welfare.~~

~~B. It is therefore the intention of the Legislature that the purposes of the Oklahoma Tuition Trust Act and of the Oklahoma Tuition Trust Fund created by the Oklahoma Tuition Trust Act shall be to:~~

~~1. encourage education and the means of education;~~

~~2. maintain state institutions of higher education by helping to provide a stable financial base to these institutions;~~

~~3. provide wide and affordable access to state institutions of higher education for the residents of this state;~~

~~4. encourage attendance at state institutions of higher education;~~

~~5. provide students and their parents economic protection against rising tuition costs;~~

~~6. provide students and their parents assistance in financing postsecondary education;~~

~~7. help provide the benefits of higher education to the people of this state; and~~

~~8. encourage elementary and secondary students in this state to achieve high standards of performance~~ purpose of the Oklahoma College Savings Trust Act is to foster efforts by parents and other individuals to accrue savings which will at least partially offset the basic costs of higher education at some future time for persons they wish to receive the benefits of such education. It is the further purpose of the act to provide a means by which earnings from such savings will be exempt from individual income tax by this state and by the government of the United States. In establishing this act and the trust created by it, however, the Legislature does not, by itself or for this state or for the Trust or for the Oklahoma State Regents of Higher Education or any other agency of this state, make any guarantee or warranty, express or implied, except as stated in individual advance college payment contracts entered into by the Trust and a purchaser, that such monies will be returned; will earn a return on investment; will be sufficient to meet the basic future costs of higher education at any institution; will establish for any person any right to or preference for admission, retention, housing, or other consideration; or that any future costs will be guaranteed or institutional policies restricted or governed in any way; or that policies of the Trust will not be subject to change.

SECTION 3. AMENDATORY Section 3, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6002), is amended to read as follows:

Section 6002. As used in the Oklahoma ~~Tuition~~ College Savings Trust Act:

1. ~~"Advance tuition college payment contract"~~ means a contract entered into by the Trust and a purchaser ~~to provide for the higher education of~~ whereby the Trust shall apply purchaser payments or the remainder thereof, and earned income therefrom, to basic costs of higher education incurred by a qualified beneficiary at a participating institution;

2. ~~"Regents" means the Oklahoma State Regents for Higher Education;~~ "Basic costs of higher education" means:

- a. general enrollment fee, nonresident tuition, other fees established by the Regents or such tuition and fees as are established by a participating institution which is not a part of The Oklahoma State System of Higher Education, and
- b. costs of housing in a residential facility operated by the participating institution, or of that portion of the cost of other housing that does not exceed the average cost of housing in such residential facility and for which payments are collected by the participating institution, and
- c. costs of the following items if payments are collected by the participating institution and if the items are specified by the participating institution as required generally or are specified in a course syllabus as required for a particular course: Books, workbooks, syllabi, computer hardware and software, and other materials and equipment;

3. "Eligibility period" means the period of time during which a qualified beneficiary may exercise the rights granted in an advance college payment contract;

4. "Fund" means the Oklahoma College Savings Trust Fund created by the Oklahoma College Savings Trust Act;

5. "Participating institution" means an institution of higher education within this state which is accredited by the Regents and is designated by the Regents as a participating institution for the purposes of the Oklahoma College Savings Trust Act;

~~3.~~ 6. "Purchaser" means a person who makes ~~or is obligated to~~ make ~~advance tuition~~ payments pursuant to an advance ~~tuition~~ college payment contract;

~~4.~~ 7. "Qualified beneficiary" means ~~any resident of this state, eligible and entitled to attend a state institution of higher education without further in-state tuition payment pursuant to an advance tuition payment contract~~ a person enrolled in course work leading to a baccalaureate or graduate degree at a participating institution and who is designated as the beneficiary of an advance college payment contract, or a person so enrolled to whom the benefits of such contract are transferred pursuant to rules established by the Trustees;

~~5. "Institution of higher education" means a state-supported institution of higher education within this state, which is designated by the Regents as an institution of higher education for purposes of the Oklahoma Tuition Trust Act;~~

8. "Regents" means the Oklahoma State Regents for Higher Education;

~~6.~~ 9. "Trust" means the Oklahoma Tuition Trust;

~~7. "Tuition" means the general enrollment fees imposed each semester upon residents of this state to attend a state institution of higher education including all mandatory special fees required as a condition of enrollment as determined by the State Regents for Higher Education;~~

~~8. "Nonresident tuition" means the semester charges imposed upon nonresidents of this state to attend a state institution of higher education including all general enrollment fees, nonresident~~

~~tuition payments and mandatory special fees as determined by the State Regents for Higher Education; and~~

~~9. "Eligibility period" means the period of time in which a qualified beneficiary may exercise the rights granted in an advance payment contract.~~

~~10. "Trustees" means the trustees of the Oklahoma College Savings Trust.~~

SECTION 4. AMENDATORY Section 4, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6003), is amended to read as follows:

Section 6003. A. There is hereby created the "Oklahoma Tuition College Savings Trust". ~~The purposes, powers, and duties of the Oklahoma Tuition Trust are vested in and shall be exercised by, the board of trustees of which shall be the Oklahoma State Regents for Higher Education. The chairman of the Regents shall be the chairman of the Trustees.~~

B. ~~The Regents may delegate to its chairperson or any other person such functions and authority as the Regents consider necessary or appropriate. These functions may include, but are not limited to, the oversight and supervision of employees of the Regents which implement the Oklahoma Tuition Trust Act. There is hereby created a trust fund to be known as the "Oklahoma College Savings Trust Fund". The Fund shall be managed and controlled by the Trustees, who shall utilize the Fund to implement and operate the Oklahoma College Savings Trust Act. The trust principal shall consist of:~~

1. Monies paid to the Trust in behalf of qualified beneficiaries; and

2. Monies or assets contributed to the Trust from any other source, public or private.

C. ~~The Regents may create an investment advisory committee. The committee shall be composed of five (5) members appointed by the~~

~~Regents. The members shall have skill and experience in the business and financial fields. The members shall serve at the pleasure of the Regents. The committee shall make recommendations to the Regents concerning the investment of the monies of the Trust~~
Notwithstanding other provisions of law, income and investment return on Fund principal shall accrue to the Fund for use as provided by authorization of the Trustees for the purposes of the Oklahoma College Savings Trust Act. No such income or investment return or principal shall be used for indirect expenses. Expenses incurred by the Trust, other than direct expenses for investment management and custodial fees, audits, costs of management of participant accounts and payment services, and publication of reports, shall be paid from monies appropriated to the Regents by the Legislature.

D. The Trustees shall discharge their duties as trustees of the Fund:

1. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

2. By diversifying the investments of the monies of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

3. In accordance with the laws, documents and instruments governing the Fund.

E. The monies of the Fund shall be invested only in assets eligible for the investment of funds of legal reserve life insurance companies in this state as provided for in Sections 1602 through 1611, 1613 through 1620, and 1622 through 1624 of Title 36 of the Oklahoma Statutes. The term "admitted assets" shall mean the amount of the monies of the Fund, and the provisions relating to limitation of investments as a percentage of surplus and loans to policyholders

shall be inapplicable with respect to investment of the monies of the Fund. The monies of the Fund may be invested in certificates of indebtedness or such other enforceable evidences of obligation as may be utilized in rights-of-way acquisitions by the Oklahoma Department of Transportation. The monies of the Fund may also be invested in bonds secured by first mortgages, pass-through securities, and insured participation certificates representing interests in first mortgages or insured mortgage pass-through certificates on one- to four-family residences located within this state.

F. The Trustees may procure insurance indemnifying Regents from personal loss or accountability from liability resulting from an action or inaction as a Trustee.

G. The Trustees may establish an investment committee for the Fund. Such investment committee shall be composed of Trustees appointed by the chairman of the Trustees. The committee shall make recommendations to the entire membership of the Trustees on all matters related to the choice of custodians and managers of the assets of the Fund, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the Trustees in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of the Trustees nor take effect without the approval of the Trustees.

H. The Trustees shall retain qualified investment managers to provide for the investment of the monies of the Fund. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Trustees. Subject to the overall investment guidelines set by the Trustees, the investment managers shall have full discretion in the management of those monies of the Fund allocated to the investment managers. The Trustees shall manage those monies not specifically

allocated to the investment managers. The monies of the Fund allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

I. Funds and revenues for investment by the investment managers or the Trustees shall be placed with a custodian selected by the Trustees. The custodian shall be a bank or trust company offering pension fund master trustee and master custodial services. The custodian shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Trustees. In compliance with the investment policy guidelines of the Trustees, the custodian bank or trust company shall be contractually responsible for ensuring that all monies of the Fund are invested in income-producing investment vehicles at all times. If a custodian bank or trust company has not received direction from the investment managers of the Fund as to the investment of the monies of the Fund in specific investment vehicles, the custodian bank or trust company shall be contractually responsible to the Trustees for investing the monies in appropriately collateralized short-term interest-bearing investment vehicles.

J. Prior to August 1 of each year, the Trustees shall develop written investment plans for the Fund.

K. The Trustees shall compile quarterly financial reports of all the funds and accounts of the Fund on a fiscal year basis. The reports shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The reports shall contain combined and individual rates of returns of the investment managers by category of investment, over periods of time.

The reports shall be distributed to the Director of the Legislative Service Bureau, the Chairman of the Joint Committee on Fiscal Operations, the Director of the Office of State Finance, and the State Treasurer.

L. Before October 1 of each year, the Trustees shall publish an annual report presented in simple and easily understood language. The report shall cover the operation of the Trust and the Fund during the immediately preceding fiscal year, including income, disbursements, and the financial condition of the Fund at the end of the fiscal year. The report shall include an opinion by a Certified Public Accountant or public accountant licensed by the Oklahoma State Board of Public Accountancy stating that the related financial statements are prepared in accordance with generally accepted accounting principles. The report shall also contain the information issued in the quarterly reports required pursuant to subsection K of this section. The report shall be distributed to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Director of the Legislative Service Bureau, the Chairman of the Joint Committee on Fiscal Operations, the Director of the Office of State Finance, and each Trust participant.

M. A person or a financial institution is a fiduciary with respect to the Fund to the extent that the person or the financial institution:

1. Exercises any discretionary authority or discretionary control respecting management of the Fund or exercises any authority or control respecting management or disposition of the assets of the Fund;

2. Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Fund, or has any authority or responsibility to do so; or

3. Has any discretionary authority or discretionary responsibility in the administration of the Fund.

N. A fiduciary with respect to the Fund shall not cause the Fund to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect:

1. Sale or exchange, or leasing of any property from the Fund to a party in interest;

2. Lending of money or other extension of credit from the Fund to a party in interest;

3. Furnishing of goods, services, or facilities from the Fund to a party in interest; or

4. Transfer to, or use by or for the benefit of, a party in interest of any assets of the Fund.

O. A fiduciary with respect to the Fund shall not:

1. Deal with the assets of the Fund in the fiduciary's own interest or for the fiduciary's own account;

2. In the fiduciary's individual or any other capacity act in any transaction involving the Fund on behalf of a party whose interests are adverse to the interests of the Fund; or

3. Receive any consideration for the fiduciary's own personal account from any party dealing with the Fund in connection with a transaction involving the assets of the Fund.

P. A fiduciary with respect to the Fund may:

1. Invest all or part of the assets of the Fund in deposits which bear the highest interest rate available for funds with the necessary degree of availability in a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such plan; or

2. Provide any ancillary service by a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such plan.

SECTION 5. AMENDATORY Section 5, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6004), is amended to read as follows:

Section 6004. A. For the purpose of implementing and administering the Oklahoma ~~Tuition~~ College Savings Trust Act, the ~~Regents shall have the power and duty~~ Trustees are authorized to:

1. ~~invest any money of the Trust, at the discretion of the Regents, in any instruments, obligations, securities or property deemed proper by the Regents, and name and use depositories for its money~~ promulgate rules for the implementation and operation of the Trust and the Fund;

2. ~~pay money~~ monies of the Fund to state participating institutions of higher education from the fund upon presentation by said institutions of claims for basic costs of higher education incurred by qualified beneficiaries while residing within this state or while residing outside of this state for purposes of participation in a program of such institution which requires such outside participation;

3. ~~impose reasonable residency requirements for qualified beneficiaries consistent with the policies of the institution of higher education which the qualified beneficiary attends~~ pay refunds from the Fund to a qualified beneficiary or to a participant or, in lieu of a designated beneficiary, a participant's estate;

4. ~~impose reasonable limits on the number of participants in the Trust if necessary to maintain the financial and actuarial soundness of the Trust. Any, granting any~~ refused purchaser shall receive a priority over prospective new purchasers when additional contracts are let participation is reopened;

5. ~~contract for goods and services and engage,~~ employ personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional management, and technical assistance and advice;

6. accept payments from participants and solicit and accept gifts, donations, grants, loans, and other aids from any person, firm or corporation or ~~the federal, state, or local~~ entity of government or any agency of the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program thereof;

7. charge, impose, and collect administrative transaction fees ~~and charges in connection with any transaction~~ and ~~provide for reasonable penalties, including default,~~ for delinquent payment of fees ~~or charges~~ or advance college savings contract payments, and to declare contracts in default for fraud;

8. procure insurance against any loss in connection with the Trust's property, assets, or activities;

9. make, execute, and deliver contracts, conveyances, and other instruments ~~necessary or convenient to the exercise of its powers~~;

10. enter into advance college payment contracts ~~on behalf of the state~~;

11. ~~invest,~~ manage and administer the assets of the Trust; and

12. ~~indemnify or procure insurance indemnifying the Regents from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Regents~~;

13. ~~impose reasonable time limits on use of the tuition benefits provided by the Trust, if the limits are made~~ determine eligibility periods, making same a part of ~~the~~ an advance college payment contract;

14. ~~provide for receiving contributions in lump sums or periodic sums; and~~

15. ~~promulgate reasonable rules and regulations and establish policies, procedures, and eligibility criteria to implement the Oklahoma Tuition Trust Act pursuant to the Administrative Procedures Act.~~

B. ~~The Regents Trustees shall make any arrangements that are necessary or appropriate with institutions of higher education in order to fulfill its obligations under advance tuition payment contracts, which arrangements may include, but need not be limited to, the payment by the Regents of the then actual tuition cost on behalf of a qualified beneficiary to the institution of higher education~~ adopt all rules according to the Oklahoma Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.

C. ~~The Trust may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the Trust.~~

SECTION 6. AMENDATORY Section 6, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6005), is amended to read as follows:

Section 6005. A. ~~The Trust, on behalf of itself and the state, may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary to attend any of the institutions of higher education to which the qualified beneficiary is admitted, without further fees to the qualified beneficiary. In addition, an~~ An advance ~~tuition~~ college payment contract shall set forth in a clear, understandable manner all of the following:

1. The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary;
2. The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, shall be due;
3. Provisions for late payment charges and for default;
4. The name and age of the qualified beneficiary under the contract. ~~The~~ and the conditions under which the purchaser, with the approval of ~~and on conditions determined by~~ the Trust, may

subsequently ~~substitute~~ transfer the benefits to another person ~~for~~
~~the qualified beneficiary originally named;~~

~~5. The number of credit hours covered by the contract, but the credit hours shall not exceed the number of credit hours required for the granting of a bachelor's degree in the applicable degree program at any institution of higher education to which the qualified beneficiary is admitted;~~

~~6. The name of the person entitled to terminate or negotiate modifications of the contract, which, as provided by the contract, may be the purchaser, the qualified beneficiary, or a person acting on behalf of the purchaser or qualified beneficiary, or any combination of these persons;~~

~~7. 6. The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or the purchaser or designated qualified beneficiary if the contract so provides, shall be entitled upon termination;~~

~~8. The assumption of a contractual obligation by the Trust to the qualified beneficiary on its own behalf and on behalf of the state to provide for a specified number of credit hours of higher education, not to exceed the number of credit hours required for the granting of a bachelor's degree, at any institution of higher education to which the qualified beneficiary is admitted. The contract shall require that a named beneficiary who is not an Oklahoma resident at the time the beneficiary is enrolled in a state institution of higher education shall pay all applicable nonresident tuition or fees imposed on nonresident students at the university or college at which the beneficiary is enrolled;~~

~~9. 7. The eligibility period;~~

~~10. That a qualified beneficiary may attend a community junior college in this state before entering another institution of higher education for the purpose of completing a bachelor's degree if the~~

~~beneficiary so chooses, and that the contract may be terminated pursuant to the provisions of Section 9 of this act after completing the requirements for a degree or certificate at the community junior college in this state or before entering the other institution of higher education;~~

11. 8. All other rights and obligations of the purchaser and the Trust; and

~~12. Other~~ 9. Such other terms, conditions, and provisions as the Trust considers in its sole discretion to be Trustees regard as necessary or appropriate.

B. The Trust ~~shall make any~~ Trustees shall not designate an institution as a participating institution until the governing board of the institution executes an agreement with the Trust whereby the governing board agrees to enforce all arrangements that are necessary ~~or appropriate with institutions of higher education required by the Trust~~ in order to fulfill its obligations under advance ~~tuition~~ college payment contracts. ~~Arrangements may include, but need not be limited to, the payment by the Trust of the then actual in-state tuition cost on behalf of a qualified beneficiary to the institution of higher education.~~

C. An advance ~~tuition~~ college payment contract may provide that, if after a number of years specified in the contract the contract has not been terminated or the qualified beneficiary's rights under the contract have not been exercised, the Trust, after making a reasonable effort to locate the purchaser and qualified beneficiary or the agent of either, shall retain the amounts otherwise payable and the rights of the qualified beneficiary, the purchaser or the agent of either shall be considered terminated.

SECTION 7. AMENDATORY Section 9, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6008), is amended to read as follows:

Section 6008. ~~A.~~ An advance ~~tuition~~ college payment contract shall authorize a termination of the contract when any one of the following occurs:

1. The qualified beneficiary dies;

2. The qualified beneficiary is not admitted to a ~~state~~ participating institution of higher education after making proper application;

3. The qualified beneficiary certifies to the Regents, after attaining the age of eighteen (18), that such qualified beneficiary has decided not to attend a ~~state~~ participating institution of higher education and requests, in writing, that the advance ~~tuition~~ college payment contract be terminated; or

4. Other circumstances, determined by the ~~Trust~~ Trustees and set forth in the advance ~~tuition~~ college payment contract, occur.

~~B. An advance tuition payment contract shall provide for a refund pursuant to this section to a person to whom the refund is payable under the contract upon termination of the contract. If the qualified beneficiary has a high school diploma or has reached the age of majority, and attends an institution of higher education, the amount of a refund shall be the lesser of the average tuition cost of all state institutions of higher education on the date of termination of the contract, or the face amount of the payment or payments and any accrued investment income attributable to the payment or payments, or the lowest tuition cost of all state institutions of higher education on the date of termination of the contract depending upon the terms of the contract. The amount of a refund shall be reduced by an appropriate percentage if the purchaser entered into an advance tuition payment contract that provided for a fixed number of credit hours less than the total number of credit hours required by a state institution of higher education for the awarding of a bachelor's degree, by the amount transferred to a community or junior college on behalf of a~~

~~qualified beneficiary when the contract is terminated as provided in Section 6 of this act and by the amount transferred to an institution of higher education on behalf of a qualified beneficiary. Termination of a contract and the right to receive a refund shall not be authorized under the contract if the qualified beneficiary has completed more than one-half (1/2) of the credit hours required by the institution of higher education for the awarding of a bachelor's degree. However, this provision shall not affect the termination and refund rights of a graduate of a community or junior college. Pursuant to this subsection and except as provided by subsection C of this section, the Trust shall make refund payments in equal installments over four (4) years and not later than August 15 of the year due.~~

~~C. An advance tuition payment shall authorize a person, who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the refund to a community or junior college located in this state. If directed to make payments pursuant to this subsection, the Trust shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary, but the Trust shall not transfer a cumulative amount greater than the refund to which the person is entitled. If the refund exceeds the total amount of transfers directed to the designated institution, the excess shall be returned to the person to whom the refund is otherwise payable.~~

SECTION 8. AMENDATORY Section 10, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6009), is amended to read as follows:

Section 6009. ~~A. There is hereby created in the State Treasury an "Oklahoma College Tuition Trust Fund" into which shall be deposited all assets accruing to the Trust including payments received by the Trust from purchasers on behalf of qualified beneficiaries, and from which, upon appropriation, shall be paid all~~

~~expenditures of the Trust. The fund may be divided into separate accounts. Any unexpended balance in the fund at the end of any fiscal year shall not be transferred into the General Revenue Fund. All interest or other increase earned from the investment of money in the Oklahoma Tuition Trust Fund shall be credited to and deposited to the fund. Monies in the fund shall not be commingled with any other monies of the Regents.~~

~~B. The Regents shall annually prepare or cause to be prepared an accounting of the Trust and shall transmit a copy of the accounting to the Governor and to each house of the Legislature. The accounts of the Regents Trust shall be subject to annual audits by the State Auditor and Inspector.~~

~~C. 1. The fund shall be administered by the Regents in a manner reasonably designed to be actuarially sound such that the assets of the fund will be sufficient to defray the obligations of the fund. The actuarial assumptions shall take into consideration the age of each qualified beneficiary, the projected earnings of the fund investments and the estimated cost of tuition payments for qualified beneficiaries to institutions of higher education; and~~

~~2. In the accounting of the Trust made pursuant to this section, the Regents shall annually evaluate or cause to be evaluated the actual soundness of the Trust and determine the additional assets needed, if any, to defray the obligations of the Trust. If there are not sufficient funds to ensure the actual soundness of the Trust, the Regents shall adjust payments of subsequent purchases to ensure its actuarial soundness. In no case shall there be an appropriation of monies from general revenue to the Regents for purposes of the Oklahoma Tuition Trust Act; however, nothing in this subsection shall prevent state agencies from providing assistance to the Regents. The assets and earnings of the Trust shall be the sole source for payment of the liabilities incurred by the Trust pursuant to the Oklahoma Tuition Trust Act.~~

~~D.~~ Unless otherwise provided by resolution of the ~~Regents Trustees~~, assets of the Trust shall be expended in the following order of priority:

1. to make payments to institutions of higher education on behalf of qualified beneficiaries;
2. to make refunds upon termination of an advance ~~tuition college~~ payment contract; and
3. to pay the costs of administration and organization of the Trust and the ~~fund~~ Fund.

~~E. Assets of the Trust may be invested in any instrument, obligation, security, or property considered appropriate by the Trust and may be pooled for investment purposes with investments of the state, including, but not limited to, state pension funds, on such terms and conditions as are agreeable to the Trust.~~

SECTION 9. AMENDATORY Section 11, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6010), is amended to read as follows:

Section 6010. A. The ~~Regents Trustees~~ shall solicit answers to appropriate ruling requests from the United States Internal Revenue Service regarding the tax status of the value received ~~under the pursuant to an advance college payment~~ contract to the purchaser ~~or~~ and to the qualified beneficiary. The ~~Regents Trustees~~ shall attempt to ensure that purchasers and qualified beneficiaries receive the maximum federal and state tax benefits under this program. No contracts shall be entered into with any purchaser ~~prior to June 1, 1990 or~~ until receipt of an Internal Revenue Service private letter ruling determining that:

1. the income of the Trust is excludable from gross income as income earned by an integral part of the state or as income derived from the exercise of an essential governmental function that accrues to the state under Section 115 of the Internal Revenue Code 26 U.S.C.A., Section 101 et seq.; and

2. the purchase price of such a contract either is excludable from the application of the federal gift tax or qualifies as a gift of a present interest in property eligible for the ~~ten-thousand-dollar~~ Ten Thousand Dollar (\$10,000.00) annual exclusion under Section 2503 of the Internal Revenue Code, whichever occurs later; and

3. payments to a participating institution are excludable from the gross income of the qualified beneficiary in behalf of whom they are paid.

B. The Regents may solicit answers to appropriate ruling requests from the United States Securities and Exchange Commission regarding the application of federal security laws to the ~~fund~~ operation of the Trust and the Fund.

SECTION 10. AMENDATORY Section 12, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6011), is amended to read as follows:

Section 6011. State institutions of higher education, purchasers and qualified beneficiaries may enforce the Oklahoma ~~Tuition~~ College Savings Trust Act and any contract entered into pursuant to the Oklahoma ~~Tuition~~ College Savings Trust Act in the district court for Oklahoma County.

SECTION 11. AMENDATORY Section 13, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6012), is amended to read as follows:

Section 6012. A. Except as provided in subsection B of this section, the assets of the Trust shall be preserved, invested, and expended solely pursuant to and for the purposes set forth in the Oklahoma ~~Tuition~~ College Savings Trust Act and shall not be loaned or otherwise transferred or used by the state for any purpose other than the purposes of the Oklahoma ~~Tuition~~ College Savings Trust Act. This section shall not be construed to prohibit the Trust from investing in, by purchase or otherwise, bonds, notes, or other

obligations of the state, an agency of the state, or an instrumentality of the state.

B. Not less than three percent (3%) nor more than ten percent (10%), as determined by the Regents, of the interest income generated by the investment of the assets of the Oklahoma College ~~Tuition~~ Savings Trust Fund shall be used for the purpose of making tuition aid grants pursuant to the Oklahoma Higher Education Tuition Aid Act, Section 626.1 et seq. of this title.

SECTION 12. AMENDATORY Section 15, Chapter 261, O.S.L. 1988 (70 O.S. Supp. 1990, Section 6014), is amended to read as follows:

Section 6014. A. The property of the Trust and its income and operation shall be exempt from all taxation by this state or any of its political subdivisions.

B. The purchaser of an advance college payment contract may deduct from Oklahoma taxable income the amount of payment made ~~under an advance tuition payment contract~~ during the tax year.

C. An advance ~~tuition payment~~ college savings contract is not a security subject to regulation by the state. An advance ~~tuition~~ college savings contract may not be sold or otherwise transferred by the purchaser or qualified beneficiary without the prior approval of the ~~Regents~~ Trustees.

D. Payments made by the Trust to a participating institution for costs incurred by a qualified beneficiary are excluded from Oklahoma taxable income.

E. Refunds made by the Trust are included in Oklahoma taxable income.

F. Refunds made by the Trust shall be reported by the Trust to the Oklahoma Tax Commission and the United States Internal Revenue Service.

SECTION 13. REPEALER Sections 7, 8 and 14, Chapter 261, O.S.L. 1988, Section 16, Chapter 261, O.S.L. 1988, as amended by

Section 16, Chapter 375, O.S.L. 1989, Section 17, Chapter 261, O.S.L. 1988, as amended by Section 17, Chapter 375, O.S.L. 1989, Section 18, Chapter 261, O.S.L. 1988 and Section 19, Chapter 261, O.S.L. 1988, as amended by Section 18, Chapter 375, O.S.L. 1989 (70 O.S. Supp. 1990, Sections 6006, 6007 and 6013), are hereby repealed.

SECTION 14. This act shall become effective July 1, 1991.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-079

WHT