

## Assembly Bill No. 3045

### CHAPTER 406

An act to amend Sections 69980, 69982, 69983, 69985, 69986, 69990, 70010.1, 70010.5, 70010.7, 70011, and 70011.7 of the Education Code, relating to student financial aid, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 2002. Filed  
with Secretary of State September 9, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 3045, Committee on Higher Education. Student financial aid: Golden State Scholarshare Trust: California Memorial Scholarship Program.

(1) Existing law establishes the Golden State Scholarshare Trust Act, pursuant to which, under regulations adopted by the Student Aid Commission, participants invest money in the Golden State Scholarshare Trust for the benefit of a specific beneficiary for the advance savings for the beneficiary's higher education expenses, as defined, at certain postsecondary educational institutions. Existing provisions of the act define "beneficiary," "institution of higher education," and "qualified higher education expenses" for the purposes of the act by conforming these definitions to those included in the federal Internal Revenue Code, as amended by a prescribed federal statute in 1997.

This bill would instead require that these definitions conform to that federal statute, as it is amended from time to time, if, as determined by the Scholarshare Investment Board, the amendment is consistent with the purposes of this act.

(2) An existing provision of the act limits the overall maximum investment level for a designated beneficiary, as defined, to the maximum estimated qualified higher education expenses, as defined, that can be incurred by a beneficiary to obtain a baccalaureate degree at an institution of higher education, as defined, in California for 5 years commencing in the year the majority of beneficiaries of that age are expected to be eligible to enroll in a higher education program for 4 years. An existing provision of the act requires that the maximum investment level be published by the trust as a monetary amount by year group.



This bill would delete this 5-year deadline. The bill would require that the maximum investment level be published by the trust as a monetary amount.

(3) Existing provisions of the act require the payment of a penalty upon the cancellation of a participation agreement.

This bill would delete these requirements.

(4) An existing provision of the act requires the Golden State Scholarshare Trust to report prescribed information, including the amount of any missed contributions that the participant is eligible to make up and the names of the State Senator and Assembly Member who represent the district in which the participant or beneficiary resides, to each participant or beneficiary annually by March 1.

This bill would delete the requirement of the reporting of the amount of any missed contributions that the participant is eligible to make up, and would delete the requirement that the annual report be made by March 1, and, as to the names of the State Senators and Assembly Members, would require only the reporting of an Internet Web site and a toll-free telephone number where these names may be accessed.

(5) Existing law establishes the California Memorial Scholarship Program under the administration of the Scholarshare Investment Board. This program provides scholarships at institutions of higher education, as defined, for surviving dependents, as defined and as identified by the Treasurer, of California residents killed as a result of injuries sustained during the terrorist attacks of September 11, 2001.

This bill would require the California Victim Compensation and Government Claims Board, rather than the Treasurer, to identify the surviving dependents who are eligible for the program. The bill would conform the program's definition of "institution of higher education" to the definition of "eligible educational institution" contained in a specified provision of federal law. The bill would authorize distributions to be made from the program's scholarship fund to eligible surviving dependents on or after July 1, 2005.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 69980 of the Education Code is amended to read:

69980. As used in this article, the following terms have the following meanings, unless the context requires otherwise:

(a) "Act" or "Scholarshare trust" or "Scholarshare" means the Golden State Scholarshare Trust Act.



(b) “Administrative fund” means the funds used to administer the Golden State Scholarshare Trust Act.

(c) “Beneficiary” has the same meaning as “designated beneficiary,” as provided in paragraph (1) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as it is amended from time to time, if, as determined by the board, the amendment is consistent with the purposes of this article.

(d) “Benefits” means the payment of higher education expenses on behalf of a beneficiary by the Scholarshare trust during the beneficiary’s attendance at an institution of higher education.

(e) “Board” means the Scholarshare Investment Board established pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 69984.

(f) “Golden State Scholarshare Trust” or “Scholarshare trust” means the trust created pursuant to this act.

(g) “Institution of higher education” has the same meaning as “eligible educational institution,” as provided in paragraph (5) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as it is amended from time to time, if, as determined by the board, the amendment is consistent with the purposes of this article.

(h) “Participant” means an individual, trust, estate, partnership, association, company or corporation, a custodian under the California Uniform Transfers to Minors Act (Part 9 (commencing with Section 3900) of Division 4 of the Probate Code), a state or local government agency, or a legal representative of a participant who has entered into a participation agreement pursuant to this act. “Participant” also means an account owner.

(i) “Participation agreement” means an agreement between a participant and the Scholarshare trust, pursuant to this act.

(j) “Program administrator” means the administrator of the Scholarshare trust appointed by the board to administer and manage the trust.

(k) “Program fund” means the program fund established by this act, which shall be held as a separate fund within the Scholarshare trust.

(l) “Qualified higher education expenses” means the expenses of attendance at an institution of higher education as provided in paragraph (3) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as it is amended from time to time, if, as determined by the board, the amendment is consistent with the purposes of this article, and as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965 (20 U.S.C. Sec. 1087ll, as amended).



(m) “Tuition and fees” means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

SEC. 2. Section 69982 of the Education Code is amended to read:

69982. In addition to effectuating and carrying out all of the powers granted by this act, the board shall have all powers reasonably necessary to carry out and effectuate the purposes, objectives, and provisions of this act pertaining to the Scholarshare trust, including, but not necessarily limited to, the power to do all of the following:

(a) Carry out studies and projections in order to advise participants regarding present and estimated future higher education expenses and the levels of financial participation in the trust required in order to enable participants to achieve their education funding objectives.

(b) Contract for goods and services and engage personnel, including consultants, actuaries, managers, counsel, and auditors, as necessary for the purpose of rendering professional, managerial, and technical assistance and advice.

(c) Participate in any other way in any federal, state, or local governmental program for the benefit of the Scholarshare trust.

(d) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the Scholarshare trust, and provide for reasonable service charges, including penalties for cancellations.

(e) Procure insurance against any loss in connection with the property, assets, or activities of the Scholarshare trust.

(f) Administer the funds of the Scholarshare trust.

(g) Procure insurance indemnifying any member of the board from personal loss or liability resulting from a member’s action or inaction as a member of the board.

(h) Adopt reasonable regulations for the administration of the Scholarshare trust.

(i) Set minimum and maximum investment levels.

(j) (1) Except as otherwise provided in this section, the overall maximum investment level for a designated beneficiary shall not exceed the amount equivalent to the maximum estimated qualified higher education expenses, as defined by subdivision (l) of Section 69980 and established by the trust, that can be incurred by a beneficiary. The maximum investment level shall be published by the trust as a monetary amount, in order to state contribution limits clearly and to encourage participation on behalf of beneficiaries who will attend all types of higher education institutions, both public and independent.

(2) Participants shall be permitted to make up payments, in full or in part, for years in which they were eligible to contribute, but did not, including years prior to the enactment of this section, for the benefit of



a designated beneficiary. Contributions by entities exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and state and local government agencies operating bona fide scholarship programs for the benefit of beneficiaries to be named when the scholarships are awarded are not subject to maximum contribution limits.

SEC. 3. Section 69983 of the Education Code is amended to read: 69983. The Scholarshare trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

(a) The board may specify a required minimum length of time before distributions for higher education expenses may be made, and may impose a penalty on the early distribution of funds if deemed by the trust to be necessary.

(b) Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

(c) Beneficiaries designated in participation agreements may be designated from date of birth.

(d) Participants shall be informed that the execution of a participation agreement by the trust shall not guarantee in any way that higher education expenses will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will do any of the following:

(1) Be admitted to an institution of higher education.

(2) If admitted, be determined a resident for tuition purposes by the institution of higher education.

(3) Be allowed to continue attendance at the institution of higher education following admission.

(4) Graduate from the institution of higher education.

(5) Have sufficient savings to cover fully all qualified education expenses of attending an institution of higher education.

(e) Beneficiaries may be changed as permitted by the regulations of the board upon request of the participant, provided that the substitute beneficiary is eligible.

(f) Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters.

(g) Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions set forth and contained in the regulations adopted by the board.

(h) All contributions to Scholarshare accounts shall be in cash.

SEC. 4. Section 69985 of the Education Code is amended to read:



69985. (a) Any participant may cancel a participation agreement at will. A participant shall be entitled to a refund upon cancellation thereof of an amount equal to the then current market value of the amount of all contributions made to his or her account.

(b) Upon the occurrence of any of the following circumstances, no penalty shall be levied by the Scholarshare trust in the event of cancellation of a participation agreement:

(1) Death or disability of the beneficiary.

(2) The beneficiary's receipt of a scholarship or allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code received by the designated beneficiary, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment.

(c) In the event of cancellation of a participation agreement for any of the causes listed in subdivision (b), the participant shall be entitled to a refund equal to the then current market value of the amount of all contributions made by the participant under the participation agreement.

(d) Any cancellation of a participation agreement shall be deemed to be made as of the close of business for the calendar month during which notice of the cancellation is received by the board, and the current market value of contributions as of that date shall be determined by utilizing the monthly report for that month pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 69984.

SEC. 5. Section 69986 of the Education Code is amended to read:

69986. For all purposes of California law, the following apply:

(a) The participant shall retain ownership of all contributions made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the payments made by the participant shall be deemed to be held in trust for the benefit of the beneficiary. Neither the contributions, nor any interest derived therefrom, may be pledged as collateral for any loan.

(b) In the event the participation agreement is canceled prior to payment of higher education expenses for the beneficiary, the participant shall retain ownership of all contributions made under the participation agreement and reversionary right to receive interest on all the contributions at the rate of interest at which the contributions were invested.

(c) Notwithstanding subdivision (b), if there has been a decrease in the value of the funds in a participant's account at the time of cancellation of the participation agreement, the participant shall not have ownership rights to any amount above the market value of the funds in the account at the time of cancellation.



(d) Program administrators shall develop adequate measures to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary or in excess of the maximum contribution limits provided for in this article.

(e) If the beneficiary graduates from an institution of higher education and has no intention of further attendance at an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant.

(f) Program administrators shall develop a method to make payment of qualified higher education expenses directly to higher education institutions for the benefit of designated beneficiaries and to control for fraud under any direct reimbursement method of payment that it may adopt. The institution of higher education shall obtain ownership of the payments made for the higher education expenses paid to the institution at the time each payment is made to the institution.

(g) Program administrators may also develop a method to make payment of qualified higher education expenses directly to beneficiaries in a manner that is consistent with applicable federal requirements and restrictions.

(h) Any amounts paid pursuant to the Golden State Scholarshare Trust that are not listed in this section shall be owned by the trust.

(i) A participant may transfer ownership rights to another eligible participant, including, but not necessarily limited to, a gift of the ownership rights to an eligible minor beneficiary pursuant to this act. The transfer shall be effected and the property distributed in accordance with administrative regulations adopted by the board or the terms of the participation agreement.

(j) Custodians under the California Uniform Transfers to Minors Act (Part 9 (commencing with Section 3900) of Division 4 of the Probate Code) may enter into participation agreements in accordance with regulations adopted by the board.

SEC. 6. Section 69990 of the Education Code is amended to read:

69990. (a) The trust shall provide an annual listing to the Franchise Tax Board on magnetic tape or other machine-readable form, and in a manner agreed upon by the Franchise Tax Board and the Scholarshare trust, of all distributions, including payment of benefits and refunds, to any individual with respect to an interest in a participation agreement. The listing shall include the names, addresses, tax identification numbers, and type and amounts of each distribution, including interest earned and penalties imposed. The taxpayer's identification numbers obtained through the participation agreement process shall be used exclusively for state and federal tax administration purposes.



(b) The trust shall make a report to each participant or beneficiary of the type and amount of each distribution, including payment of benefits and refunds.

(c) The trust also shall report annually by March 1 to each participant or beneficiary all of the following:

(1) The value of the beneficiary's account.

(2) The interest earned thereon.

(3) The rate of return of the investments in the beneficiary's account for that reporting period.

(4) The investment goal the participant will achieve if all future contributions with respect to that beneficiary are timely made.

(5) Information regarding the trends in qualified higher education expenses at the state's public segments of higher education, which shall include, but need not be limited to, the following:

(A) The actual increase or decrease in qualified higher education expenses in the prior year.

(B) To the extent possible, any proposals by the segments to increase or decrease fees or tuition in the next fiscal year.

(C) To the extent possible, any proposals by the Legislature or the Governor to increase or decrease fees or tuition in the next fiscal year.

(D) An Internet Web site and toll-free telephone number where the names of the State Senator and Assembly Member who represent the district in which the participant or beneficiary resides, and a business address and telephone number where they may be reached, may be accessed.

(d) The trust, as an advocate for affordable higher education opportunities for participants and beneficiaries of the program, shall also provide a means for participants or beneficiaries to express concerns or comments regarding the Scholarshare trust program and any information required to be reported by this section.

SEC. 7. Section 70010.1 of the Education Code, as added by Chapter 38 of the Statutes of 2002, is amended to read:

70010.1. As used in this article:

(a) "Board" means the Scholarshare Investment Board established pursuant to Section 69984.

(b) "California resident" means a person who would not be required to pay nonresident tuition under Chapter 1 (commencing with Section 68000) of Part 41.

(c) "Dependent" means a person identified by the California Victim Compensation and Government Claims Board because of his or her relationship to a California resident killed as a result of injuries sustained during the terrorist attacks of September 11, 2001.



(d) “Fund” means the California Memorial Scholarship Fund established pursuant to Section 5066 of the Vehicle Code.

(e) “Institution of higher education” has the same meaning as “eligible educational institution,” as defined in paragraph (5) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34).

(f) “Participant” means a surviving dependent of a California resident killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, who has executed, or on whose behalf has been executed, an agreement pursuant to Section 70011.

(g) “Program” means the California Memorial Scholarship Program established pursuant to Section 70010.

(h) “Scholarship” means a participant’s account as established by the board with moneys deposited in the fund.

SEC. 8. Section 70010.5 of the Education Code, as added by Chapter 38 of the Statutes of 2002, is amended to read:

70010.5. (a) The California Victim Compensation and Government Claims Board shall identify all persons who are eligible for scholarships under the program. The California Victim Compensation and Government Claims Board shall notify these persons or, in the case of minors, the parents or guardians of these persons, of their eligibility for scholarships under the program. This notification shall be in writing, and shall be received by all of the appropriate persons no later than July 1, 2003.

(b) Eligible persons, or in the case of minors, the parents or guardians of these persons, shall inform the board of their decision on whether to participate in the program in a timely manner. Eligible persons, or in the case of minors, the parents or guardians of these persons, who are to become participants in the program shall execute agreements pursuant to Section 70011 no later than July 1, 2005.

SEC. 9. Section 70010.7 of the Education Code, as added by Chapter 38 of the Statutes of 2002, is amended to read:

70010.7. (a) (1) The Department of Motor Vehicles shall deposit the proceeds of the sale of California memorial license plates into the fund in accordance with paragraph (2) of subdivision (c) of Section 5066 of the Vehicle Code. When an agreement is executed pursuant to Section 70011, the board shall establish an account within the fund for the benefit of a person eligible for the program.

(2) Distributions from the fund shall commence on July 1, 2005. After July 1, 2005, the total amount of moneys in the fund shall, at all times, be evenly divided among the accounts that are in existence at that time until the board has transferred five thousand dollars (\$5,000) from



the fund into each account. When five thousand dollars (\$5,000) has been transferred by the board into each account, all revenues remaining in the fund shall be deposited into the Antiterrorism Fund created by paragraph (1) of subdivision (c) of Section 5066 of the Vehicle Code and distributed as provided in that paragraph.

(b) Moneys in the fund, including moneys in the accounts, may be invested and reinvested by the board, or may be invested in whole or in part under contract with private money managers, as determined by the board. The interest earned shall accrue to the accounts.

(c) The board shall establish within the fund an administrative account, the amount deposited in which may not exceed 5 percent of the total amount of moneys in the fund. Funds in the administrative account may be used, upon appropriation in the annual Budget Act or in another statute, for the administrative costs of the board in administering the program.

(d) No moneys from the fund may be encumbered, and no distribution may be made from any account in the fund, unless and until an appropriation authorizing that encumbrance or distribution is made in the annual Budget Act or in another statute.

SEC. 10. Section 70011 of the Education Code, as added by Chapter 38 of the Statutes of 2002, is amended to read:

70011. (a) The board may enter into agreements with participants or with persons entitled to act on behalf of participants.

(b) An agreement shall specify that any moneys remaining in an account after the 30th birthday of the participant, or not later than July 1, 2015, whichever occurs last, shall revert to the Antiterrorism Fund established under paragraph (1) of subdivision (c) of Section 5066 of the Vehicle Code. The agreements may also include, but need not be limited to, the terms and subject matter set forth in Section 69983.

SEC. 11. Section 70011.7 of the Education Code, as added by Chapter 38 of the Statutes of 2002, is amended to read:

70011.7. Within the annual report required pursuant to Section 69989, the board shall also include information on the operation of the program. This information shall include, but need not be limited to, data on the number of agreements executed during the year, the date on which each agreement is executed, the age of each participant, the amount and number of distributions made from accounts within the fund, and the rate of return on the funds invested under this article.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:



In order to make vital adjustments in the operation of the Golden State Scholarshare Trust and the California Memorial Scholarship Program in time for the commencement of the 2002–03 academic year, it is necessary that this act take effect immediately.

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