

Senate Bill No. 1262

Passed the Senate September 10, 1999

Secretary of the Senate

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 69980, 69981, 69982, 69983, 69984, 69985, 69986, 69989, and 69993.5 of, and to add Section 69993.7 to, the Education Code, relating to student financial aid.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, O'Connell. Student financial aid: Golden State Scholarshare Trust Act.

(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 law establishes the Scholarshare Investment Board, which consists of the Treasurer, the Director of Finance, and the chief executive officer of the commission.

This bill, instead, would include on the board a member of the Student Aid Commission appointed by the Governor, rather than the chief executive officer of the commission, and would add as board members the Secretary of Education, a member of the public appointed by the Governor, a representative from a California public institution of higher education appointed by the Senate Committee on Rules, and a representative from a California independent college or university or a state-approved college, university, or vocational/technical school appointed by the Speaker of the Assembly. The bill would require the board to appoint an administrator of the program, who would serve at the pleasure of the board.

The bill also would require the board, rather than the commission, to adopt regulations, and to undertake other duties, applicable to the Golden State Scholarshare Trust Act.



The bill would provide that regulations adopted by, and contracts entered into by, the commission for purposes of the act are deemed to be regulations adopted by, and contracts entered into by, the board and that these contracts may be amended when authorized by the board.

The bill would make related technical changes.

(2) The existing Golden State Scholarshare Trust Act prohibits the overall maximum investment level for a designated beneficiary from exceeding the amount equivalent 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 in California in 4 years, as specified.

This bill would amend the Golden State Scholarshare Trust Act to increase to 5 years the period of undergraduate study on which the calculation of maximum estimated qualified higher education expenses is based.

(3) Existing provisions of the Golden State Scholarshare Trust Act require that each participation agreement entered into by a participant in the scholarshare program require the participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, and require that a change in beneficiaries may only be made prior to the date of admission of any beneficiary under a participation agreement by an institution of higher education.

This bill would delete these provisions.

(4) Existing provisions of the Golden State Scholarshare Trust Act establish procedures for the payment of qualified higher education expenses, as defined, from trust funds and for the execution of participation agreements under the act.

This bill would authorize administrators of the scholarshare program to develop a method to make payment of qualified higher education expenses directly to beneficiaries in a manner consistent with applicable



federal requirements. The bill would authorize custodians under the California Uniform Transfers to Minors Act to enter into participation agreements under the act in accordance with regulations adopted by the board.

(5) The bill would prohibit public funds and funds available under the program from being expended to pay for, and would prohibit the board from entering into any agreement that provides for, the appearance of any elected official or declared candidate for public office in any paid advertisement promoting the program.

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 amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34).

(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 amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34).

(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 amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34), 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. 10871l, 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 69981 of the Education Code is amended to read:

69981. (a) There is hereby created an instrumentality of the State of California to be known as the Golden State Scholarshare Trust.



(b) The purposes, powers, and duties of the trust are vested in, and shall be exercised by, the board.

(c) The board, in the capacity of trustee, shall have the power and authority to do all of the following:

(1) Sue and be sued.

(2) Make and enter into contracts necessary for the administration of the Scholarshare trust.

(3) Adopt a corporate seal and change and amend it from time to time.

(4) Cause moneys in the program fund to be held and invested and reinvested.

(5) Enter into agreements with any institution of higher education, the State of California, or any federal or other state agency or other entity as required for the effectuation of its rights and duties.

(6) Accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund. Except as otherwise provided in Section 69982, the trust may not accept any contribution by any nonpublic entity, person, firm, partnership, or corporation that is not designated for a specified beneficiary.

(7) Enter into participation agreements with participants, as set forth in Section 69983.

(8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

(9) Make refunds to participants upon the cancellation of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this act.

(10) Appoint a program administrator and determine the duties of the program administrator and other staff as necessary and set their compensation.

(11) Make provisions for the payment of costs of administration and operation of the Scholarshare trust.

(12) Carry out the duties and obligations of the Scholarshare trust pursuant to this act and have any and all other powers as may be reasonably necessary for the



effectuation of the purposes, objectives, and provisions of this act pertaining to the Scholarshare trust, as set forth in Section 69982.

(d) The board shall adopt regulations as it deems necessary to implement this article consistent with the federal Internal Revenue Code and regulations issued pursuant to that code to ensure that this program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.

SEC. 3. 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 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 as necessary, including consultants, actuaries, managers, counsel, and auditors 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 to obtain a baccalaureate degree at an institution of higher education in California in five 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 four years. The maximum investment level shall be published by the trust as a monetary amount by year group, 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. 4. 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 written 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, and upon payment of a penalty, set forth and contained in the regulations adopted by the board.



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

SEC. 5. Section 69984 of the Education Code is amended to read:

69984. (a) (1) The board shall segregate moneys received by the Scholarshare trust into two funds, which shall be identified as the program fund and the administrative fund. Notwithstanding Section 13340 of the Government Code, the program fund is hereby continuously appropriated, without regard to fiscal years, to the board for the purposes of this article. Funds in the administrative fund shall be available for expenditure, upon appropriation, for the purposes specified in this article.

(2) (A) The trust shall separately account for any moneys received by an entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or a state or local government agency, depositing the money for the benefit of a beneficiary to be named later pursuant to the operation of a bona fide scholarship program.

(B) There is hereby created the Scholarshare Investment Board, which consists of the Treasurer, the Director of Finance, the Secretary of Education, a member of the Student Aid Commission appointed by the Governor, a member of the public appointed by the Governor, a representative from a California public institution of higher education appointed by the Senate Committee on Rules, and a representative from a California independent college or university or a state-approved college, university, or vocational/technical school appointed by the Speaker of the Assembly. The Treasurer shall serve as chair of the board. The board shall appoint an administrator of the program who shall serve at the pleasure of the board. The board shall annually prepare and adopt a written statement of investment policy. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing. The board shall approve the investment management entity or entities consistent with subparagraph (C). Not later than 30 days



after the close of each month there shall be placed on file for public inspection during business hours a report with respect to investments made pursuant to this section and a report of deposits in financial institutions. The investment manager shall report the following information to the board within 30 days following the end of each month:

(i) The type of investment, name of the issuer, date of maturity, par and dollar amount invested in each security, investment, and money within the program fund.

(ii) The weighted average maturity of the investments within the program fund.

(iii) Any amounts in the program fund that are under the management of private money managers.

(iv) The market value as of the date of the report and the source of this valuation for any security within the program fund.

(v) A description of the compliance with the statement of investment policy.

(C) Moneys in the program fund may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with private money managers, as determined by the Scholarshare Investment Board.

(b) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by this act. On an annual basis, expenditures from the administrative fund shall not exceed more than 1 percent of the total program fund. All costs of administration of the trust shall be paid out of the administration fund.

(c) All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Deposits and interest thereon accumulated on behalf of participants in the program fund of the Scholarshare trust may be used for payments to any institution of higher education.



SEC. 6. Section 69985 of the Education Code is amended to read:

69985. (a) Any participant may cancel a participation agreement at will. Participants 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 their account, less a penalty with respect to the interest earned thereon to be levied by the Scholarshare trust that shall be more than de minimis.

(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 135(d)(1)(B) or (C) 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. 7. 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. If cancellation occurs, the program administrator shall impose a penalty on any interest earned that is more than a de minimis amount.

(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 herein.

(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. The administrator shall impose a penalty that is more than de minimis.

(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 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. 8. Section 69989 of the Education Code is amended to read:

69989. (a) The board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Scholarshare trust by September 30 to the Governor, the Controller, the State Auditor, and the Legislature. The annual audit shall be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees. Any contributions to the Scholarshare trust fund that are not directed to a



specified beneficiary shall be accounted for and treated separately in the annual audit.

(b) The annual audit shall be supplemented by the following information prepared by the board:

(1) Any studies or evaluations prepared in the preceding year.

(2) A summary of the benefits provided by the trusts including the number of participants and beneficiaries in the trust.

(3) Any other information that is relevant in order to make a full, fair, and effective disclosure of the operations of the Scholarshare trust.

SEC. 9. Section 69993.5 of the Education Code is amended to read:

69993.5. The board may adopt regulations for the purposes of this chapter as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For the purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the board complies with rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 10. Section 69993.7 is added to the Education Code, to read:

69993.7. No public funds nor any funds available pursuant to this article may be expended to pay for, nor shall the board enter into any agreement that provides



for, the appearance of any elected official or declared candidate for public office in any paid advertisement promoting the act.

SEC. 11. Regulations adopted by, and contracts entered into by, the Scholarshare Investment Board's predecessor trustee, the Student Aid Commission, for purposes of the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code) are deemed to be regulations adopted by, and contracts entered into by, the Scholarshare Investment Board. Any of these contracts may be amended when authorized by the Scholarshare Investment Board. Until April 1, 2000, Section 10295 of, and Article 4 (commencing with Section 10335) and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code shall not apply to any of these contract amendments, but on and after that date shall apply.



Approved _____, 1999

Governor

