

BURNS J FLOOR AMENDMENT  
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1012  
(Reference to Senate engrossed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 15-1851, Arizona Revised Statutes, is amended to  
3 read:

4 15-1851. Commission for postsecondary education; purpose;  
5 report; members; terms; powers and duties;  
6 compensation; quorum; personal liability; definition

7 ~~A. The commission for postsecondary education is established as the~~  
8 ~~postsecondary review entity for this state for the conduct, supervision and~~  
9 ~~coordination of the review of postsecondary education institutions in order~~  
10 ~~to determine the eligibility of those institutions for student financial aid~~  
11 ~~monies pursuant to the provisions of part H, subpart one of the higher~~  
12 ~~education amendments of 1992 (P.L. 102-325; 106 Stat. 638; 20 United States~~  
13 ~~Code section 1099a). The commission shall accomplish the purpose of this~~  
14 ~~subsection through the accumulation of information, the performance of~~  
15 ~~studies and the determination of compliance by the postsecondary education~~  
16 ~~institutions with the provisions of part H, subpart one of the higher~~  
17 ~~education amendments of 1992. The review authority of the commission shall~~  
18 ~~be limited to circumstances where the United States department of education~~  
19 ~~has referred an institution to the commission for review or where the United~~  
20 ~~States department of education has approved the review of an institution in~~  
21 ~~accordance with criteria established by the United States department of~~  
22 ~~education. The commission shall keep records of its activities, and the~~  
23 ~~commission shall provide information when requested to the United States~~  
24 ~~secretary of education for financial and compliance audits and for~~

~~institution evaluation. The scope of authority of the commission acting as a postsecondary review entity to review any educational institution is limited specifically to compliance by the institution with title IV, part H, subpart one of the higher education amendments of 1992. Any review of any institution conducted by the commission shall be performed in the context of the institution's individual mission and purposes. The commission shall not exercise planning, policy, coordinating, supervisory, budgeting or administrative powers over any postsecondary institution in this state.~~

~~B.~~ A. The commission FOR POSTSECONDARY EDUCATION IS ESTABLISHED AND shall also administer the applicable programs identified under section 1203 of the higher education act amendments of 1998 (P.L. 105-244), including the leveraging educational assistance partnership program, the federal family education loan program and the Paul Douglas teacher scholarships program, and shall supervise the state guarantee agency under the higher education act amendments of 1998.

~~C.~~ B. In addition to the responsibilities prescribed in ~~subsections A and B~~ SUBSECTION A of this section, the commission shall:

1. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest, including the following:

(a) The postsecondary needs of unserved and underserved individuals in this state.

(b) The resources of public and private institutions, organizations and agencies that are located in this state and that are capable of providing postsecondary education opportunities.

(c) Enrollment demand and public policy options to meet statewide needs for postsecondary education services.

(d) Cooperative comprehensive instructional and capital planning.

2. Provide reports pursuant to this subsection on discussions of issues of mutual interest.

3. Coordinate and promote collaborative studies on issues of mutual interest to public and private postsecondary education institutions.

1           4. Compile and disseminate information to the public regarding  
2 postsecondary education opportunities in this state.

3           5. Prepare an annual report that summarizes the results of the  
4 commission's activities prescribed in this section and section 15-1852. The  
5 annual report shall be submitted to the speaker of the house of  
6 representatives, the president of the senate, the governor and the Arizona  
7 state library, archives and public records by December 28.

8           ~~D.~~ C. The commission consists of the executive director of the  
9 Arizona board of regents, the executive director of the state board for  
10 private postsecondary education and the following additional members who  
11 shall be appointed by the governor pursuant to section 38-211:

12           1. Two members who hold senior executive or managerial positions in a  
13 university under the jurisdiction of the Arizona board of regents.

14           2. Two members who hold senior executive or managerial positions in a  
15 community college district, one representing a community college district in  
16 a county with a population of five hundred thousand persons or more and one  
17 representing a community college district in a county with a population of  
18 less than five hundred thousand persons.

19           3. Two members who hold senior executive or managerial positions in  
20 private postsecondary institutions of higher education that are licensed  
21 under title 32, chapter 30, that are located in this state, that offer  
22 bachelor or higher degrees and that are accredited by a regional  
23 accreditation agency approved by the United States department of education.

24           4. Two members who hold senior executive or managerial positions in  
25 private postsecondary institutions of higher education that are licensed  
26 under title 32, chapter 30, that are located in this state, that offer  
27 vocational education programs and that are accredited by a national  
28 accreditation agency approved by the United States department of education.

29           5. One member who holds a senior executive or managerial position in a  
30 private cosmetology school that is licensed under title 32, chapter 5, that  
31 is located in this state, that offers cosmetology programs approved by the

1 board of cosmetology and that is accredited by a national accreditation  
2 agency approved by the United States department of education.

3 6. One member who holds a senior executive or managerial position in  
4 an institution that is licensed under title 32, chapter 23 or under the  
5 provisions of 14 Code of Federal Regulations part 147, that offers vocational  
6 education programs at the postsecondary level, that is located in this state  
7 and that is not an institution that is qualified under any other category.

8 7. One member who has held a senior executive or managerial level  
9 position in commerce or industry in this state for at least three years  
10 before the member's appointment and who is not qualified to serve under any  
11 other category.

12 8. Two members who hold senior executive or managerial positions in  
13 the high school education system in this state.

14 9. One member who is an owner, operator or administrator of a charter  
15 school in this state.

16 ~~E.~~ D. Members of the commission appointed pursuant to subsection ~~D-~~  
17 C, paragraphs 1 through 9 of this section shall serve four year terms.  
18 Appointed members of the commission shall be residents of this state.  
19 Appointed members of the commission at all times during their terms shall  
20 continue to be eligible for appointment under the category that they were  
21 appointed to represent. Terms of appointed members of the commission begin  
22 on the third Monday in January. No appointed member of the commission may  
23 serve more than two consecutive terms.

24 ~~F.~~ E. The executive director of the Arizona board of regents and the  
25 executive director of the state board for private postsecondary education  
26 serve as members of the commission during their respective terms of office  
27 and are not eligible to vote with respect to the commission's review of any  
28 postsecondary institution.

29 ~~G.~~ F. Members appointed pursuant to subsection ~~D-~~ C, paragraphs 1  
30 through 9 of this section are eligible to receive compensation pursuant to  
31 section 38-611 for each day spent in the performance of commission duties and

1 may be reimbursed for expenses properly incurred in connection with the  
2 attendance at meetings or hearings of the commission.

3 ~~H.~~ G. The governor shall appoint a chairman from among the members of  
4 the commission who shall serve a one year term that begins on the third  
5 Monday in January.

6 ~~I.~~ H. ~~Except as provided in subsection J of this section,~~ A majority  
7 of the members of the commission constitutes a quorum for the transaction of  
8 commission business. The vote of a majority of the quorum constitutes  
9 authority for the commission to act.

10 ~~J. For all purposes relating to title IV, part H, subpart one of the~~  
11 ~~higher education amendments of 1992 the commission membership shall consist~~  
12 ~~only of the members appointed pursuant to subsection D paragraphs 1 through 7~~  
13 ~~of this section, and all commission actions taken pursuant to title IV, part~~  
14 ~~H, subpart one of the higher education act of 1992 require the affirmative~~  
15 ~~vote of at least six members.~~

16 ~~K.~~ I. Members of the commission are immune from personal liability  
17 with respect to all actions that are taken in good faith and within the scope  
18 of the commission's authority.

19 ~~L.~~ J. For the purposes of this section, "community college district"  
20 means a community college district that is established pursuant to sections  
21 15-1402 and 15-1403 and that is a political subdivision of this state.

22 Sec. 2. Section 15-1852, Arizona Revised Statutes, is amended to read:  
23 15-1852. Additional powers and duties

24 A. In addition to the powers and duties prescribed in section 15-1851,  
25 the commission for postsecondary education shall:

- 26 1. Meet at least four times each year.
- 27 2. Adopt rules to carry out the purposes of this article.
- 28 3. Administer and enforce ~~the provisions of~~ this article and rules  
29 adopted pursuant to this article.
- 30 4. Keep a record of its proceedings.

1           5. Contract, on behalf of this state, with the United States secretary  
2 of education for the purpose of complying with the provisions of part H of  
3 the higher education amendments of 1992.

4           ~~6. Enter into agreements and contracts with state regulatory agencies  
5 or entities, accrediting bodies and other peer review systems for the purpose  
6 of complying with the provisions of title IV program eligibility reviews as  
7 set forth in part H of the higher education amendments of 1992. Agreements  
8 and contracts executed pursuant to this subsection shall be for the purpose  
9 of conducting fact-finding activities, eligibility reviews, compliance  
10 assessments and recommendations, program reviews and consumer complaint  
11 studies. The review authority of the commission shall be limited to those  
12 circumstances specified in section 15-1851, subsection A. The commission  
13 shall provide sufficient monies to the agency or contractor to perform review  
14 functions.~~

15           ~~7. Establish procedures for the performance of the title IV  
16 eligibility reviews as prescribed in part H, subpart one of the higher  
17 education amendments of 1992, the evaluation and assessment of the reviews  
18 performed, the evaluation and assessment of the postsecondary institution's  
19 initial and continuing title IV eligibility, the notification of the results  
20 of the reviews and the enforcement of an appeals process that provides for  
21 due process for postsecondary education institutions. The review authority  
22 of the commission shall be limited to those circumstances specified in  
23 section 15-1851, subsection A.~~

24           ~~8. Establish procedures by which agencies of this state that are  
25 responsible for oversight of postsecondary institutions receive notification  
26 of eligibility reviews, eligibility determinations and actions and other  
27 actions taken or planned against postsecondary institutions.~~

28           ~~9.~~ 6. Comply with ~~the provisions of~~ title 38, chapter 3, article 3.1  
29 and title 39.

30           B. The commission may:

- 31           1. Adopt an official seal.
- 32           2. Contract.

- 1           3. Sue and be sued.
- 2           4. Receive, hold, make and take leases of and sell personal property  
3 for the benefit of the commission.
- 4           5. Employ permanent or temporary personnel as the commission deems  
5 necessary to carry out this article. The commission may designate the duties  
6 of these personnel. The commission employees are subject to title 41,  
7 chapter 4, articles 5 and 6.
- 8           6. Conduct investigations, hold hearings and determine methods of  
9 enforcement of ~~the provisions of~~ this article.
- 10          7. Issue subpoenas to compel the attendance of witnesses and the  
11 production of documents, administer oaths, take testimony, hear proof and  
12 receive exhibits into evidence.
- 13          8. Establish policy centers under its control to conduct studies.
- 14          9. Coordinate and promote studies of interest to postsecondary  
15 institutions in this state.
- 16          C. The commission is exempt from title 41, chapter 6 but shall adopt  
17 rules in a manner substantially similar to title 41, chapter 6.
- 18          Sec. 3. Section 15-1853, Arizona Revised Statutes, is amended to read:  
19 15-1853. Funding; federal monies; postsecondary education fund;  
20 report
- 21          A. The postsecondary education fund is established consisting of:  
22           1. Monies appropriated by the legislature.  
23           2. Monies received from state agencies and political subdivisions of  
24 this state.  
25           3. Monies received from the United States government, including monies  
26 received from the United States department of education pursuant to  
27 subsection B of this section.
- 28           4. Gifts, grants and donations received from any private source to  
29 carry out the duties and responsibilities of the commission.
- 30          B. The commission may receive monies distributed by the United States  
31 department of education for the reimbursement of the costs of performing  
32 review requirements. The costs may include expenses for ~~the instruction of~~

1 ~~personnel needed to serve the purpose of section 15-1851, subsection A,~~ the  
2 supplementation of existing review functions, work performed by  
3 subcontractors or consultants in connection with the review functions of the  
4 commission and any other administrative expenses necessary for compliance  
5 with part H, subpart one of the higher education amendments of 1992. No more  
6 than thirteen per cent of amounts received by the commission from the United  
7 States department of education may be utilized for administrative purposes by  
8 the commission.

9 C. The commission shall administer the fund in compliance with the  
10 requirements of this article. The commission shall separately account for  
11 monies received from each source listed in subsection A of this section and  
12 may establish accounts and subaccounts of the fund as necessary to carry out  
13 the requirements of this subsection.

14 D. Monies obtained pursuant to subsection A, paragraphs 1 through 3 of  
15 this section are subject to legislative appropriation. The commission shall  
16 not use these monies for purposes other than those designated by special line  
17 items for which the monies are received.

18 E. Monies obtained pursuant to subsection A, paragraph 4 of this  
19 section are continuously appropriated. These monies shall be used in  
20 accordance with the requests of the donor. If no request is specified, the  
21 monies may be used for additional responsibilities of the ~~board~~ COMMISSION  
22 prescribed in section 15-1851, subsection ~~C~~ B and section 15-1852,  
23 subsection B, paragraphs 8 and 9.

24 F. The commission shall report quarterly to the joint legislative  
25 budget committee on fund deposits and expenditures."

26 Renumber to conform

27 Page 4, after line 30, insert:

28 "Sec. 6. Section 15-1871, Arizona Revised Statutes, is amended to  
29 read:

30 15-1871. Definitions

31 In this article, unless the context otherwise requires:



1           1. "Account" means an individual trust account in the fund established  
2 as prescribed in this article.

3           2. "Account owner" means the person who enters into a tuition savings  
4 agreement pursuant to this article, who is an account owner within the  
5 meaning of section 529 of the internal revenue code and who is designated at  
6 the time an account is opened as having the right to withdraw monies from the  
7 account before the account is disbursed to or for the benefit of the  
8 designated beneficiary.

9           3. "Commission" means the commission for postsecondary education  
10 established by section 15-1851.

11           4. "Committee" means the family college savings program oversight  
12 committee.

13           5. "Designated beneficiary" means a person who qualifies as a  
14 designated beneficiary under section 529 of the internal revenue code and,  
15 except as provided in section 15-1875, subsections ~~R~~ P and ~~S~~ Q, with  
16 respect to an account, who is designated at the time the account is opened as  
17 the person whose higher education expenses are expected to be paid from the  
18 account or, if this designated beneficiary is replaced in accordance with  
19 section 15-1875, subsections ~~E, F and G~~ D, E AND F, the replacement  
20 beneficiary.

21           6. "Eligible educational institution" means an institution of higher  
22 education that qualifies under section 529 of the internal revenue code as an  
23 eligible educational institution.

24           7. "Financial institution" means any bank, commercial bank, national  
25 bank, savings bank, savings and loan association, credit union, insurance  
26 company, brokerage firm or other similar entity that is authorized to do  
27 business in this state.

28           8. "Fund" means the family college savings program trust fund that  
29 constitutes a public instrumentality of this state AND THAT IS established by  
30 section 15-1873.

31           9. "Member of the family" means any of the following:

1 (a) A son or daughter of a person or a descendant of the son or  
2 daughter of the person.

3 (b) A stepson or stepdaughter of a person.

4 (c) A brother, sister, stepbrother or stepsister of a person. For the  
5 purposes of this subdivision, "brother" and "sister" includes a brother or  
6 sister by the half-blood.

7 (d) The father or mother of a person or the ancestor of the father or  
8 mother of a person.

9 (e) A stepfather or stepmother of a person.

10 (f) A son or daughter of a person's brother or sister. For the  
11 purposes of this subdivision, "brother" and "sister" includes a brother or  
12 sister by the half-blood.

13 (g) A brother or sister of the person's father or mother. For the  
14 purposes of this subdivision, "brother" and "sister" includes a brother or  
15 sister by the half-blood.

16 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law,  
17 brother-in-law or sister-in-law of a person.

18 (i) The spouse of a person or the spouse of any individual described  
19 in this paragraph.

20 (j) A first cousin of a person.

21 (k) Any individual who meets the criteria for family membership  
22 described in this paragraph as a result of legal adoption.

23 10. "Nonqualified withdrawal" means a withdrawal from an account other  
24 than one of the following:

25 (a) A qualified withdrawal.

26 (b) A withdrawal made as the result of the death or disability of the  
27 designated beneficiary of an account.

28 (c) A withdrawal that is made on the account of a scholarship, or the  
29 allowance or payment described in section 135(d)(1)(B) or (C) of the internal  
30 revenue code, and that is received by the designated beneficiary, but only to  
31 the extent of the amount of this scholarship, allowance or payment.

32 (d) A rollover or change of designated beneficiary.

1           11. "Person" means an individual, an individual's legal representative  
2 or any other legal entity authorized to establish a savings account under  
3 section 529 of the internal revenue code and the corresponding regulations.

4           12. "Program" means the family college savings program **THAT IS**  
5 established under this article **AND** that constitutes a qualified tuition  
6 program as defined in section 529 of the internal revenue code.

7           13. "Qualified higher education expenses" means tuition, fees, books,  
8 supplies, room and board and equipment required for enrollment or attendance  
9 of a designated beneficiary at an eligible educational institution and  
10 expenses for special needs services in the case of a special needs  
11 beneficiary that are incurred in connection with enrollment or attendance, if  
12 these expenses meet the definition of qualified higher education expenses in  
13 section 529 of the internal revenue code.

14           14. "Qualified withdrawal" means a withdrawal from an account to pay  
15 the qualified higher education expenses of the designated beneficiary of the  
16 account, but only if the withdrawal is made in accordance with this article.

17           15. "Section 529 of the internal revenue code" means section 529 of  
18 the internal revenue code of 1986, as amended, and the final regulations  
19 issued pursuant to that section.

20           16. "Trust interest" means an account owner's interest in the fund  
21 created by a tuition savings agreement for the benefit of a designated  
22 beneficiary.

23           17. "Tuition savings agreement" means an agreement between the  
24 commission, as trustee of the fund, and an account owner that creates an  
25 interest in the fund and that provides for participation in the program.

26           Sec. 7. Section 15-1874, Arizona Revised Statutes, is amended to read:  
27 15-1874. Use of contractor as account depository and manager

28           A. The commission shall implement the operation of the program through  
29 the use of one or more financial institutions to act as the depositories of  
30 the fund and managers of the program. Under the program, persons may submit  
31 applications for enrollment in the program and establish accounts in the fund  
32 at the financial institution. Monies paid by account owners to the fund for

1 deposit in accounts maintained by the fund at a financial institution shall  
2 be paid to the financial institution as an agent of the fund and the tuition  
3 savings agreements shall provide that all monies paid by account owners to  
4 fund accounts held at financial institutions are being paid to the fund.

5 B. The committee shall solicit proposals from financial institutions  
6 to act as the depositories of fund monies and managers of the program.  
7 Financial institutions that submit proposals must describe the financial  
8 instruments that will be held in accounts. The commission shall select  
9 proposals from financial institutions to act as depositories and managers,  
10 and ~~that~~ the solicitation and selection process is exempt from the  
11 procurement code requirements of title 41, chapter 23.

12 C. On the recommendation of the committee, the commission shall select  
13 the financial institution or institutions to implement ~~the operation of~~ the  
14 program from among bidding financial institutions that demonstrate the most  
15 advantageous combination, both to potential program participants and this  
16 state, of the following factors:

- 17 1. Financial stability and integrity.
- 18 2. The safety of the investment instruments being offered, taking into  
19 account any insurance provided with respect to these instruments.
- 20 3. The ability of the investment instruments to track estimated costs  
21 of higher education as calculated by the commission and provided by the  
22 financial institution to the account holder.
- 23 4. The ability of the financial institutions, directly or through a  
24 subcontract, to satisfy record keeping and reporting requirements.
- 25 5. The financial institution's plan for promoting the program and the  
26 investment it is willing to make to promote the program.
- 27 6. The fees, if any, proposed to be charged to persons for maintaining  
28 accounts.
- 29 7. The minimum initial deposit and minimum contributions that the  
30 financial institution will require for the investment of fund monies and the  
31 willingness of the financial institution to accept contributions through  
32 payroll deduction plans and other deposit plans.

1           8. Any other benefits to this state or its residents included in the  
2 proposal, including an account opening fee payable to the commission by the  
3 account owner and an additional fee from the financial institution for  
4 statewide program marketing by the commission.

5           D. The commission shall enter into a contract with a financial  
6 institution, or except as provided in subsection E of this section, contracts  
7 with financial institutions, to serve as program managers and depositories.  
8 Program management contracts shall provide the terms and conditions by which  
9 financial institutions shall sell interests in the fund to account owners,  
10 invest monies in the fund and manage the program.

11           E. The commission may select more than one financial institution and  
12 investment for the program if both of the following conditions exist:

13           1. The United States internal revenue service has provided guidance  
14 that giving a contributor a choice of two investment instruments under a  
15 state plan will not cause the plan to fail to qualify for favorable tax  
16 treatment under section 529 of the internal revenue code.

17           2. The commission concludes that the choice of instrument vehicles is  
18 in the best interest of college savers and will not interfere with the  
19 promotion of the program.

20           F. A program manager shall:

21           1. Take all action required to keep the program in compliance with the  
22 requirements of this article and all action not contrary to this article or  
23 its contract to manage the program so that it is treated as a qualified  
24 tuition plan under section 529 of the internal revenue code.

25           2. Keep adequate records of each of the fund's accounts, keep each  
26 account segregated from each other account and provide the commission with  
27 the information necessary to prepare statements required by section 15-1875,  
28 subsections ~~0, P and Q~~ M, N AND O or file these statements on behalf of the  
29 commission.

30           3. Compile and total information contained in statements required to  
31 be prepared under section 15-1875, subsections ~~0, P and Q~~ M, N AND O and  
32 provide these compilations to the commission.

1           4. If there is more than one program manager, provide the commission  
2 with this information to assist the commission to determine compliance with  
3 section 15-1875, subsection ~~N~~ L.

4           5. Provide representatives of the commission, including other  
5 contractors or other state agencies, access to the books and records of the  
6 program manager to the extent needed to determine compliance with the  
7 contract.

8           6. Hold all accounts in the name of and for the benefit of the fund  
9 and this state.

10          G. Any contract executed between the commission and a financial  
11 institution pursuant to this section shall be for a term of at least three  
12 years and not more than seven years.

13          H. The commission may terminate a contract with a financial  
14 institution at any time for good cause on the recommendation of the  
15 committee. If a contract is terminated pursuant to this subsection, the  
16 commission shall take custody of accounts held at that financial institution  
17 and shall seek to promptly transfer the accounts to another financial  
18 institution that is selected as a program manager and into investment  
19 instruments as similar to the original investments as possible.

20          I. If the commission determines not to renew the appointment of a  
21 financial institution as a program manager, the commission may take action  
22 consistent with the interests of the program and the accounts and in  
23 accordance with its duties as the trustee of the fund, including termination  
24 of all services or continuation of certain management and administrative  
25 services of that financial institution for accounts of the program managed by  
26 that financial institution during its term as a program manager, if any  
27 continuation of services is only permitted under the following conditions:

28           1. The commission and the financial institution ~~enters~~ ENTER into a  
29 written agreement specifying the rights of the program and the commission and  
30 the responsibilities of the financial institution, including the standards  
31 that continue to be applicable to the accounts as accounts of the program.

1           2. Any services provided by the financial institution to accounts  
2 continue to be subject to the control of the commission as the trustee of the  
3 fund with responsibility of all accounts of the program.

4           Sec. 8. Section 15-1875, Arizona Revised Statutes, is amended to read:  
5           15-1875. Program requirements

6           A. The program shall be operated through the use of accounts in the  
7 fund established by account owners. Payments to the fund for participation  
8 in the program shall be made by account owners pursuant to tuition savings  
9 agreements. An account may be opened by any person who desires to invest in  
10 the fund and to save to pay qualified higher education expenses by satisfying  
11 each of the following requirements:

12           1. Completing an application in the form prescribed by the  
13 commission. The application shall include the following information:

14           (a) The name, address and social security number or employer  
15 identification number of the contributor.

16           (b) The name, address and social security number of the account owner  
17 if the account owner is not the contributor.

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

20           (d) The certification relating to no excess contributions required by  
21 subsection ~~N~~ L.

22           (e) Any other information that the commission may require.

23           2. Paying the one-time application fee established by the commission.

24           3. Making the minimum contribution required by the commission or by  
25 opening an account.

26           4. Designating the type of account to be opened if more than one type  
27 of account is offered.

28           B. Any person may make contributions to an account after the account  
29 is opened.

30           C. Contributions to accounts may be made only in cash.

31           ~~D. Account owners may withdraw all or part of the balance from an  
32 account on sixty days' notice, or a shorter period as may be authorized by~~

1 ~~the commission, under rules prescribed by the commission. These rules shall~~  
2 ~~include provisions that will generally enable the commission or program~~  
3 ~~manager to determine if a withdrawal is a nonqualified withdrawal or a~~  
4 ~~qualified withdrawal. The rules may, but need not, require one or more of~~  
5 ~~the following:~~

6 ~~1. Account owners seeking to make a qualified withdrawal or other~~  
7 ~~withdrawal that is not a nonqualified withdrawal shall provide~~  
8 ~~certifications, copies of bills for qualified higher education expenses or~~  
9 ~~other supporting material.~~

10 ~~2. Qualified withdrawals from an account shall be made only by a check~~  
11 ~~payable as designated by the account owner.~~

12 ~~3. Withdrawals not meeting certain requirements shall be treated as~~  
13 ~~nonqualified withdrawals by the program manager, and if these withdrawals are~~  
14 ~~not nonqualified withdrawals, the account owner must seek refunds of~~  
15 ~~penalties, if any, directly from the commission.~~

16 ~~E.~~ D. An account owner may change the designated beneficiary of an  
17 account to an individual who is a member of the family of the former  
18 designated beneficiary in accordance with procedures established by the  
19 commission.

20 ~~F.~~ E. On the direction of an account owner, all or a portion of an  
21 account may be transferred to another account of which the designated  
22 beneficiary is a member of the family of the designated beneficiary of the  
23 transferee account.

24 ~~G.~~ F. Changes in designated beneficiaries and rollovers under this  
25 section are not permitted if the changes or rollovers would violate either of  
26 the following:

- 27 1. Subsection ~~N~~ L, relating to excess contributions.
- 28 2. Subsection ~~K~~ I, relating to investment choice.

29 ~~H.~~ ~~In the case of any nonqualified withdrawal from an account, a~~  
30 ~~penalty may be imposed if the penalty is required for purposes of qualifying~~  
31 ~~the program as a qualified tuition program under section 529 of the internal~~  
32 ~~revenue code. The commission may adopt rules to establish the parameters for~~



~~the assessment of penalties. Any penalties assessed shall be paid to the commission for use in operating and marketing the program and for student financial aid.~~

~~I.~~ G. Each account shall be maintained separately from each other account under the program.

~~J.~~ H. Separate records and accounting shall be maintained for each account for each designated beneficiary.

~~K.~~ I. No contributor to, account owner of or designated beneficiary of any account may direct the investment, within the meaning of section 529 of the internal revenue code, of any contributions to an account or the earnings from the account.

~~L.~~ J. If the commission terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the commission shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified tuition plan.

~~M.~~ K. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

~~N.~~ L. On the recommendation of the committee, the commission shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:

1. Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary.

2. The establishment of a maximum total balance for the purpose of prohibiting contributions to accounts established for a designated beneficiary if the contributions would cause the maximum total balance to be exceeded.

1           3. The commission shall review the quarterly reports received from  
2 participating financial institutions and certify that the balance in all  
3 qualified tuition programs, as defined in section 529 of the internal revenue  
4 code, of which that person is the designated beneficiary does not exceed the  
5 lesser of:

6           (a) A maximum college savings amount established by the commission  
7 from time to time.

8           (b) The cost in current dollars of qualified higher education expenses  
9 that the contributor reasonably anticipates the designated beneficiary will  
10 incur.

11           4. Requirements that any excess contributions with respect to a  
12 designated beneficiary be promptly withdrawn in a nonqualified withdrawal or  
13 rolled over to another account in accordance with this section.

14           ~~Q.~~ M. If there is any distribution from an account to any person or  
15 for the benefit of any person during a calendar year, the distribution shall  
16 be reported to the internal revenue service and the account owner or the  
17 designated beneficiary to the extent required by federal law.

18           ~~P.~~ N. The financial institution shall provide statements to each  
19 account owner at least once each year within thirty-one days after the twelve  
20 month period to which they relate. The statement shall identify the  
21 contributions made during a preceding twelve month period, the total  
22 contributions made through the end of the period, the value of the account as  
23 of the end of this period, distributions made during this period and any  
24 other matters that the commission requires be reported to the account owner.

25           ~~Q.~~ O. Statements and information returns relating to accounts shall  
26 be prepared and filed to the extent required by federal or state tax law.

27           ~~R.~~ P. A state or local government or organizations described in  
28 section 501(c)(3) of the internal revenue code may open and become the  
29 account owner of an account to fund scholarships for persons whose identity  
30 will be determined after an account is opened.

31           ~~S.~~ Q. In the case of any account described in subsection ~~R-~~ P, the  
32 requirement that a designated beneficiary be designated when an account is

1 opened does not apply and each person who receives an interest in the account  
2 as a scholarship shall be treated as a designated beneficiary with respect to  
3 the interest.

4 ~~R.~~ R. Any social security numbers, addresses or telephone numbers of  
5 individual account holders and designated beneficiaries that come into the  
6 possession of the commission are confidential, are not public records and  
7 shall not be released by the commission.

8 ~~S.~~ S. An account owner may transfer ownership rights to another  
9 eligible account owner.

10 ~~T.~~ T. An account owner may designate successor account owners.

11 Sec. 9. Repeal

12 Section 41-3008.14, Arizona Revised Statutes, is repealed.

13 Sec. 10. Title 41, chapter 27, article 2, Arizona Revised Statutes, is  
14 amended by adding section 41-3018.14, to read:

15 41-3018.14. Commission for postsecondary education; termination

16 July 1, 2018

17 A. THE COMMISSION FOR POSTSECONDARY EDUCATION TERMINATES ON  
18 JULY 1, 2018.

19 B. TITLE 15, CHAPTER 14, ARTICLE 5 IS REPEALED ON JANUARY 1, 2019.

20 Sec. 11. Purpose

21 Pursuant to section 41-2955, subsection B, Arizona Revised Statutes,  
22 the legislature continues the commission for postsecondary education to:

23 1. Conduct, supervise and coordinate the review of public and private  
24 postsecondary education institutions in this state to determine their  
25 eligibility for student financial aid monies.

26 2. Administer specifically identified federal and state financial aid  
27 programs.

28 3. Provide a forum to public and private postsecondary education  
29 institutions for discussion of issues of mutual interest.

30 4. Coordinate and promote studies of interest to postsecondary  
31 institutions.

1                   5. Provide information to the public on postsecondary education  
2 opportunities in this state.

3                   Sec. 12. Retroactivity

4                   Sections 9 and 10 of this act are effective retroactively to July  
5 1, 2008."

6 Amend title to conform

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JENNIFER J. BURNS

SB1012JB  
03/26/2008  
2:02 PM  
C: stp