

CHAPTER 106

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 96-172

BY SENATORS Alexander, Ament, Matsunaka, Meiklejohn, Pascoe, Perlmutter, Rizzuto, Schroeder, Thiebaut, Bishop, Hernandez, Hopper, Johnson, L. Powers, Rupert, Wattenberg, and Weddig;
also REPRESENTATIVES Acquafresca, Anderson, Chavez, Dean, Keller, Musgrave, Prinster, Prinzler, Sullivant, Tupa, Allen, DeGette, Hagedorn, Kerns, Knox, Leyba, Lyle, Martin, Nichol, and Taylor.

AN ACT**CONCERNING THE CREATION OF THE COLORADO POSTSECONDARY EDUCATION EXPENSE PROGRAM.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 23-3.1-201, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

23-3.1-201. Legislative declaration. The general assembly hereby declares that the availability of improved access to and choice of higher education opportunities in this state will benefit the residents of the state and that the establishment of a student obligation bond program, with proceeds of bonds to be used for the purchase or making of student obligations or the making of authority loans, AND THE ESTABLISHMENT OF A POSTSECONDARY EDUCATION EXPENSE PROGRAM will enhance the availability of student obligations and assist residents in meeting the expenses incurred in availing themselves of higher education opportunities. It is the intent of the general assembly in enacting this part 2 to create the Colorado student obligation bond authority which shall make or purchase student obligations, ~~and~~ shall make authority loans, AND SHALL DEVELOP AND ADMINISTER A POSTSECONDARY EDUCATION EXPENSE PROGRAM and to vest the authority with powers to enable the authority to accomplish such purposes. This part 2 shall be liberally construed to accomplish the intentions expressed in this section.

SECTION 2. 23-3.1-202 (1) and (1.5), Colorado Revised Statutes, 1995 Repl. Vol., are amended, and the said 23-3.1-202 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

23-3.1-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) ~~"Authority" means the Colorado student obligation bond authority created by section 23-3.1-203.~~ "ADVANCE PAYMENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY THE AUTHORITY, AS DEFINED IN SUBSECTION (1.2) OF THIS SECTION, AND A PURCHASER IN CONNECTION WITH THE PREPAID EXPENSE PROGRAM AS AUTHORIZED IN SECTION 23-3.1-206.7.

(1.2) "AUTHORITY" MEANS THE COLORADO STUDENT OBLIGATION BOND AUTHORITY CREATED BY SECTION 23-3.1-203.

(1.5) "Authority loan" means a loan made by the authority, from bond proceeds or other moneys available, to one or more institutions of higher education located in Colorado, to a Colorado nonprofit corporation acting on behalf of one or more of such institutions of higher education, ~~or~~ to the division, OR TO PURCHASERS and made for the purpose of funding student obligations OR PAYMENTS TO BE MADE UNDER ADVANCE PAYMENT CONTRACTS.

(4.2) "DEPOSITOR" MEANS ANY PERSON WHO MAKES DEPOSITS IN ACCORDANCE WITH A SAVINGS CONTRACT.

(4.4) "EDUCATION EXPENSE PROGRAM" MEANS THE COLORADO POSTSECONDARY EDUCATION EXPENSE PROGRAM CREATED UNDER THIS PART 2, WHICH MAY INCLUDE A PREPAID EXPENSE PROGRAM OR A SAVINGS PROGRAM, OR BOTH.

(5.1) "PREPAID EXPENSE PROGRAM" MEANS THE COLORADO PREPAID POSTSECONDARY EDUCATION EXPENSE PROGRAM AUTHORIZED IN SECTION 23-3.1-206.7.

(5.2) "PREPAID EXPENSE TRUST FUND" MEANS THE COLORADO PREPAID POSTSECONDARY EDUCATION EXPENSE TRUST FUND ESTABLISHED BY THE AUTHORITY IN ACCORDANCE WITH SECTION 23-3.1-206.7 (5).

(5.3) "PURCHASER" MEANS A PERSON WHO MAKES OR IS OBLIGATED TO MAKE A PAYMENT OR PAYMENTS IN ACCORDANCE WITH AN ADVANCE PAYMENT CONTRACT ON BEHALF OF A QUALIFIED BENEFICIARY.

(5.5) "QUALIFIED BENEFICIARY" MEANS A PERSON IDENTIFIED IN AN ADVANCE PAYMENT CONTRACT OR A SAVINGS CONTRACT AS THE RECIPIENT OF MONEYS OR BENEFITS TO BE DISBURSED IN ACCORDANCE WITH AN ADVANCE PAYMENT CONTRACT OR A SAVINGS CONTRACT.

(5.6) "SAVINGS CONTRACT" MEANS A CONTRACT ENTERED INTO BY THE AUTHORITY AND A DEPOSITOR IN CONNECTION WITH THE SAVINGS PROGRAM.

(5.7) "SAVINGS PROGRAM" MEANS THE COLORADO POSTSECONDARY EDUCATION EXPENSE SAVINGS PROGRAM AUTHORIZED BY SECTION 23-3.1-206.7.

(5.8) "SAVINGS TRUST FUND" MEANS THE COLORADO POSTSECONDARY EDUCATION EXPENSE SAVINGS TRUST FUND ESTABLISHED BY THE AUTHORITY IN ACCORDANCE

WITH SECTION 23-3.1-206.7 (5).

(5.9) "STATE INSTITUTION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 23-3.3-101 (4).

(8) "TUITION" MEANS THE QUARTER, SEMESTER, OR TERM CHARGES IMPOSED BY A STATE INSTITUTION ON RESIDENTS OF THE STATE AND SUCH FEES OR CHARGES AS MAY BE INCLUDED IN THE ADVANCE PAYMENT CONTRACT AT THE OPTION OF THE AUTHORITY.

SECTION 3. 23-3.1-206 (1) (g) and (1) (n), Colorado Revised Statutes, 1995 Repl. Vol., are amended, and the said 23-3.1-206 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

23-3.1-206. General powers of authority. (1) In addition to any other powers specifically granted to the authority in this part 2, the authority has the following powers:

(g) To engage the services of private consultants and legal counsel AND TO OTHERWISE CONTRACT WITH PROVIDERS to render professional and technical assistance, and advice, AND OTHER SERVICES in carrying out the purposes of this part 2;

(n) To make and execute contracts, INCLUDING ADVANCE PAYMENT CONTRACTS WITH PURCHASERS AND SAVINGS CONTRACTS WITH DEPOSITORS, and all other instruments necessary or convenient for the exercise of its powers and functions under this part 2;

(p) TO INVEST MONEYS IN THE PREPAID EXPENSE AND SAVINGS TRUST FUNDS IN ACCORDANCE WITH THIS PART 2;

(q) TO MAKE REASONABLE RESTRICTIONS ON THE NUMBER OF PARTICIPANTS IN, AND TO IMPOSE REASONABLE TIME LIMITS ON THE USE OF BENEFITS PROVIDED BY, THE EDUCATION EXPENSE PROGRAM;

(r) TO ESTABLISH AND COLLECT REASONABLE ADMINISTRATIVE FEES AND CHARGES AND IMPOSE REASONABLE PENALTIES IN CONNECTION WITH THE EDUCATION EXPENSE PROGRAM; AND

(s) TO ESTABLISH OTHER POLICIES, PROCEDURES, AND CRITERIA TO IMPLEMENT AND ADMINISTER THE EDUCATION EXPENSE PROGRAM.

SECTION 4. Part 2 of article 3.1 of title 23, Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

23-3.1-206.7. Education expense program - feasibility study. (1) THE AUTHORITY SHALL DEVELOP AND ADMINISTER, IN ACCORDANCE WITH THIS PART 2 AND THE RULES PROMULGATED PURSUANT TO SUBSECTION (7) OF THIS SECTION, THE COLORADO POSTSECONDARY EDUCATION EXPENSE PROGRAM, WHICH PROGRAM IS HEREBY CREATED. THROUGH THE EDUCATION EXPENSE PROGRAM, ALL OR PART OF TUITION OR OTHER COSTS, AS DETERMINED BY THE AUTHORITY, MAY BE PAID IN

ADVANCE OF OR ACCUMULATED TOWARD ENROLLMENT AT STATE INSTITUTIONS AND AT SUCH OTHER INSTITUTIONS OF HIGHER EDUCATION AND GRADUATE SCHOOLS AS MAY BE APPROVED BY THE AUTHORITY.

(2) THE AUTHORITY MAY ESTABLISH A PREPAID EXPENSE PROGRAM OR A SAVINGS PROGRAM, OR BOTH, AS FOLLOWS:

(a) A PREPAID EXPENSE PROGRAM SHALL PROVIDE FOR A PAYMENT OR PAYMENTS BY A PURCHASER IN FAVOR OF A QUALIFIED BENEFICIARY IN ACCORDANCE WITH AND PURSUANT TO THE TERMS OF AN ADVANCE PAYMENT CONTRACT. AN ADVANCE PAYMENT CONTRACT SHALL ESTABLISH THE NUMBER OF CREDIT HOURS FOR WHICH TUITION AT A STATE INSTITUTION HAS BEEN CONTRACTED BY THE PURCHASER AND SHALL SPECIFY ANY MINIMUM RATE OF RETURN GUARANTEED BY THE CONTRACT. THE BENEFITS TO BE RECEIVED UNDER ANY ADVANCE PAYMENT CONTRACT SHALL BE CONTINGENT ON THE CONTINUING ACTUARIAL SOUNDNESS OF THE PREPAID EXPENSE PROGRAM. THE AMOUNT AND NUMBER OF PAYMENTS REQUIRED TO BE MADE BY A PURCHASER ON BEHALF OF A QUALIFIED BENEFICIARY UNDER AN ADVANCE PAYMENT CONTRACT SHALL BE DETERMINED BY THE AUTHORITY BASED ON AN ACTUARIAL ANALYSIS OF THE PREPAID EXPENSE TRUST FUND.

(b) A SAVINGS PROGRAM SHALL PROVIDE FOR DEPOSITS BY A DEPOSITOR IN ACCORDANCE WITH AND PURSUANT TO THE TERMS OF A SAVINGS CONTRACT. A SAVINGS CONTRACT SHALL SPECIFY ANY MINIMUM RATE OF RETURN GUARANTEED BY THE CONTRACT.

(3) NO PURCHASER, DEPOSITOR, OR QUALIFIED BENEFICIARY PARTICIPATING IN THE EDUCATION EXPENSE PROGRAM SHALL BE CLASSIFIED AS A RESIDENT FOR TUITION PURPOSES AS A RESULT OF SUCH PARTICIPATION. PURCHASERS, DEPOSITORS, AND QUALIFIED BENEFICIARIES SHALL BE REQUIRED TO ESTABLISH RESIDENCY STATUS BASED ON THE REQUIREMENTS OF THE STATE INSTITUTION AT WHICH THE QUALIFIED BENEFICIARY IS SEEKING TO ENROLL.

(4) THE SELECTION BY A PURCHASER IN AN ADVANCE PAYMENT CONTRACT OR A DEPOSITOR IN A SAVINGS CONTRACT OF A PARTICULAR STATE INSTITUTION SHALL NOT IN ANY WAY CONSTITUTE A PROMISE OR GUARANTEE THAT A QUALIFIED BENEFICIARY WILL BE ADMITTED TO ANY PARTICULAR STATE INSTITUTION OR OTHER INSTITUTION OF HIGHER EDUCATION OR ALLOWED TO CONTINUE ENROLLMENT IN OR GRADUATE FROM ANY STATE INSTITUTION OR OTHER INSTITUTION OF HIGHER EDUCATION.

(5) (a) THE COLORADO PREPAID POSTSECONDARY EDUCATION EXPENSE TRUST FUND IS HEREBY CREATED. THE PREPAID EXPENSE TRUST FUND SHALL CONSIST OF MONEYS REMITTED BY PURCHASERS IN ACCORDANCE WITH ADVANCE PAYMENT CONTRACTS, MONEYS ACQUIRED FROM GOVERNMENTAL AND PRIVATE SOURCES, AND GENERAL FUND APPROPRIATIONS, IF ANY. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PREPAID EXPENSE TRUST FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE PREPAID EXPENSE TRUST FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(b) THE COLORADO POSTSECONDARY EDUCATION EXPENSE SAVINGS TRUST FUND

IS HEREBY CREATED. THE SAVINGS TRUST FUND SHALL CONSIST OF MONEYS DEPOSITED BY DEPOSITORS IN ACCORDANCE WITH SAVINGS CONTRACTS, MONEYS ACQUIRED FROM GOVERNMENTAL AND PRIVATE SOURCES, AND GENERAL FUND APPROPRIATIONS, IF ANY. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE SAVINGS TRUST FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE SAVINGS TRUST FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(c) THE AUTHORITY SHALL MAINTAIN THE PREPAID EXPENSE TRUST FUND AND THE SAVINGS TRUST FUND AS SEPARATE FUNDS. THE AUTHORITY SHALL CREDIT ALL MONEYS REMITTED TO THE AUTHORITY PURSUANT TO ADVANCE PAYMENT CONTRACTS OR OTHERWISE RECEIVED IN CONNECTION WITH THE PREPAID EXPENSE PROGRAM TO THE PREPAID EXPENSE TRUST FUND. THE AUTHORITY SHALL CREDIT ALL MONEYS REMITTED TO THE AUTHORITY PURSUANT TO SAVINGS CONTRACTS OR OTHERWISE RECEIVED IN CONNECTION WITH THE SAVINGS PROGRAM TO THE SAVINGS TRUST FUND. MONEYS REMITTED TO THE AUTHORITY IN CONNECTION WITH THE EDUCATION EXPENSE PROGRAM GENERALLY MAY BE CREDITED TO EITHER TRUST FUND.

(d) THE AUTHORITY MAY INVEST MONEYS IN THE PREPAID EXPENSE TRUST FUND AND THE SAVINGS TRUST FUND, AS PROVIDED IN SECTION 23-3.1-216 (3), AND SHALL ADMINISTER THE FUNDS IN A MANNER APPROPRIATE TO CARRY OUT THE EDUCATION EXPENSE PROGRAM. THE AUTHORITY SHALL ANNUALLY EVALUATE THE ACTUARIAL SOUNDNESS OF THE PREPAID EXPENSE TRUST FUND AND THE SAVINGS TRUST FUND. IF, BASED UPON SUCH EVALUATION, THE AUTHORITY DETERMINES THAT EITHER TRUST FUND IS NOT ACTUARIALLY SOUND, THE AUTHORITY MAY DISTRIBUTE THE AVAILABLE ASSETS OF THAT TRUST FUND IN A MANNER PERMITTED BY OUTSTANDING ADVANCE PAYMENT OR SAVINGS CONTRACTS.

(e) (I) ALL EXPENSES OF THE AUTHORITY INCURRED IN DEVELOPING AND ADMINISTERING THE PREPAID EXPENSE PROGRAM SHALL BE PAYABLE FROM THE PREPAID EXPENSE TRUST FUND. THE AUTHORITY MAY USE MONEYS IN THE PREPAID EXPENSE TRUST FUND TO REIMBURSE THE EXPENSES OF THE AUTHORITY INCURRED IN CONNECTION WITH THE DEVELOPMENT AND ADMINISTRATION OF THE PREPAID EXPENSE PROGRAM.

(II) ALL EXPENSES INCURRED BY THE AUTHORITY IN DEVELOPING AND ADMINISTERING THE SAVINGS PROGRAM SHALL BE PAYABLE FROM THE SAVINGS TRUST FUND. THE AUTHORITY MAY USE MONEYS IN THE SAVINGS TRUST FUND TO REIMBURSE THE EXPENSES OF THE AUTHORITY INCURRED IN CONNECTION WITH THE DEVELOPMENT AND ADMINISTRATION OF THE SAVINGS PROGRAM.

(6) (a) PRIOR TO THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR THE EDUCATION EXPENSE PROGRAM PURSUANT TO SUBSECTION (7) OF THIS SECTION, THE AUTHORITY SHALL CONDUCT A FEASIBILITY STUDY TO DEVELOP CRITERIA FOR A PREPAID EXPENSE PROGRAM AND A SAVINGS PROGRAM AND TO EVALUATE THE FINANCIAL SOUNDNESS OF SUCH PROGRAMS BASED ON SUCH CRITERIA, INCLUDING A STUDY OF THE USE OF PRIVATE SERVICE PROVIDERS FOR INVESTMENT, MARKETING, AND RECORDS ADMINISTRATION IN SUCH PROGRAMS. THE FEASIBILITY STUDY SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, CONSIDERATION OF THE FOLLOWING CRITERIA TO BE DEVELOPED FOR SUCH A PROGRAM:

(I) THE CIRCUMSTANCES UNDER WHICH THE BENEFITS RECEIVABLE UNDER AN ADVANCE PAYMENT CONTRACT OR THE DEPOSITS MADE UNDER A SAVINGS CONTRACT MAY BE USED EITHER AT AN INSTITUTION OTHER THAN THE INSTITUTION DESIGNATED IN THE CONTRACT OR FOR A PURPOSE OTHER THAN HIGHER EDUCATION EXPENSES;

(II) THE CIRCUMSTANCES UNDER WHICH THE BENEFITS RECEIVABLE UNDER AN ADVANCE PAYMENT CONTRACT OR THE DEPOSITS MADE UNDER A SAVINGS CONTRACT MAY BE TRANSFERRED FROM THE DESIGNATED QUALIFIED BENEFICIARY TO ANOTHER QUALIFIED BENEFICIARY;

(III) THE BASIS ON WHICH REFUNDS OF ADVANCE PAYMENTS MAY BE AVAILABLE FROM THE PREPAID EXPENSE TRUST FUND AND DEPOSITS MAY BE DISBURSED FROM THE SAVINGS TRUST FUND;

(IV) RESTRICTIONS ON AND THE BASIS FOR TERMINATION OF ADVANCE PAYMENT AND SAVINGS CONTRACTS;

(V) REMEDIES AVAILABLE UPON DEFAULT UNDER ADVANCE PAYMENT AND SAVINGS CONTRACTS;

(VI) THE BASIS THE AUTHORITY WILL USE TO SET THE AMOUNT AND NUMBER OF PAYMENTS FOR PURCHASING ADVANCE PAYMENT CONTRACTS IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION;

(VII) ANY AGE LIMITS OR OTHER LIMITATIONS ON THE PERSONS WHO MAY BE DESIGNATED AS QUALIFIED BENEFICIARIES;

(VIII) THE SPECIFIC EDUCATIONAL COSTS TO BE GUARANTEED BY ANY ADVANCE PAYMENT CONTRACT;

(IX) THE BASIS FOR CALCULATION OF ANY BENEFITS RECEIVABLE UNDER AN ADVANCE PAYMENT CONTRACT OTHER THAN GUARANTEED TUITION;

(X) THE TIME PERIOD WITHIN WHICH THE BENEFITS RECEIVABLE UNDER AN ADVANCE PAYMENT CONTRACT MUST BE EXERCISED OR DEPOSITS UNDER A SAVINGS CONTRACT MUST BE WITHDRAWN;

(XI) THE BASIS FOR DETERMINATION OF OWNERSHIP OF THE RIGHTS AND PAYMENTS TO BE RECEIVED UNDER AN ADVANCE PAYMENT CONTRACT AND OF THE DEPOSITS UNDER A SAVINGS CONTRACT; AND

(XII) THE LENGTH AND TIMING OF THE ANNUAL PERIOD DURING WHICH ADVANCE PAYMENT CONTRACTS MAY BE PURCHASED AND SAVINGS CONTRACTS MAY BE ENTERED INTO.

(b) THE AUTHORITY SHALL COOPERATE AND CONSULT WITH THE OFFICE OF THE GOVERNOR, THE OFFICE OF THE STATE TREASURER, THE COMMISSION, THE GOVERNING BOARDS OF THE STATE INSTITUTIONS OF HIGHER EDUCATION, STUDENTS, PRIVATE INSTITUTIONS, AND OTHER INTERESTED INSTITUTIONS IN CONDUCTING THE FEASIBILITY STUDY. THE AUTHORITY SHALL PERIODICALLY CONSULT WITH THE EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND WITH THE

JOINT BUDGET COMMITTEE IN EVALUATING THE FEASIBILITY OF A FISCALLY SOUND EDUCATION EXPENSE PROGRAM.

(c) THE AUTHORITY SHALL PRESENT ITS FINDINGS REGARDING THE FEASIBILITY OF AN EDUCATION EXPENSE PROGRAM AT A JOINT MEETING OF THE EDUCATION COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE NO LATER THAN DECEMBER 1, 1996. DURING SUCH PRESENTATION, THE AUTHORITY SHALL SOLICIT COMMENTS AND SUGGESTIONS REGARDING ITS FINDINGS AND THE PROPOSED PROGRAM FROM THE MEMBERS OF THE COMMITTEES AND SHALL RECOMMEND WHETHER TO PROCEED TO IMPLEMENT A PROGRAM AND WHETHER ANY LAWS REGARDING THE EDUCATION EXPENSE PROGRAM SHOULD BE AMENDED OR REPEALED.

(7) AFTER CONSULTATION WITH THE GOVERNOR, THE STATE TREASURER, THE COMMISSION, THE GOVERNING BOARDS OF THE STATE INSTITUTIONS OF HIGHER EDUCATION, THE EDUCATION COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE BOARD SHALL ADOPT AND PUBLISH POLICIES AND PROCEDURES FOR IMPLEMENTING THE EDUCATION EXPENSE PROGRAM. SUCH POLICIES AND PROCEDURES SHALL BE EFFECTIVE AND IMPLEMENTED NO LATER THAN JULY 1, 1997.

(8) IF, AT ANY TIME, THE AUTHORITY DETERMINES THAT THE EDUCATION EXPENSE PROGRAM, OR ANY ASPECT THEREOF, IS NOT FINANCIALLY SOUND, THE AUTHORITY MAY DISCONTINUE PERMANENTLY OR FOR A PERIOD OF TIME THE PREPAID EXPENSE PROGRAM OR SAVINGS PROGRAM OR THAT PARTICULAR ASPECT OF THE PROGRAM AND THE EXECUTION OF ADDITIONAL ADVANCE PAYMENT OR SAVINGS CONTRACTS. THE AUTHORITY SHALL CONTINUE TO ADMINISTER AND MAINTAIN THE PREPAID EXPENSE AND SAVINGS TRUST FUNDS FOR THE BENEFIT OF EXISTING PURCHASERS, DEPOSITORS, AND QUALIFIED BENEFICIARIES EXCEPT AS OTHERWISE AUTHORIZED.

SECTION 5. 23-3.1-211, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

23-3.1-211. Personal liability. Neither the members of the board, employees of the authority, nor any person executing the bonds or notes OR ADVANCE PAYMENT OR SAVINGS CONTRACTS shall be liable personally on bonds or notes OR ADVANCE PAYMENT OR SAVINGS CONTRACTS or be subject to any personal liability or accountability by reason of the issuance thereof OR AS A RESULT OF THE EDUCATION EXPENSE PROGRAM.

SECTION 6. 23-3.1-213, Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

23-3.1-213. Payment of bonds, advance payment contracts, and savings contracts - nonliability of state. (4) ADVANCE PAYMENT CONTRACTS, SAVINGS CONTRACTS, AND THE BENEFITS DUE THEREUNDER SHALL NOT CONSTITUTE OR BECOME AN INDEBTEDNESS, A DEBT, OR A LIABILITY OF THE STATE, NOR SHALL THE STATE BE LIABLE ON SUCH ADVANCE PAYMENT OR SAVINGS CONTRACTS, NOR SHALL SUCH ADVANCE PAYMENT OR SAVINGS CONTRACTS CONSTITUTE THE GIVING, PLEDGING, OR LOANING OF THE FULL FAITH AND CREDIT OF THE STATE, BUT SUCH ADVANCE PAYMENT AND SAVINGS CONTRACTS AND THE BENEFITS DUE THEREUNDER SHALL BE PAYABLE SOLELY FROM THE MONEYS IN THE PREPAID EXPENSE AND

SAVINGS TRUST FUNDS, RESPECTIVELY. ADVANCE PAYMENT CONTRACTS AND THE BENEFITS DUE THEREUNDER SHALL BE PAYABLE BY THE AUTHORITY SOLELY FROM MONEYS IN THE PREPAID EXPENSE TRUST FUND AND ARE NOT PAYABLE FROM OR SECURED IN ANY WAY BY OTHER MONEYS OR ACCOUNTS OF THE AUTHORITY. SAVINGS CONTRACTS AND THE BENEFITS DUE THEREUNDER SHALL BE PAYABLE BY THE AUTHORITY SOLELY FROM MONEYS IN THE SAVINGS TRUST FUND AND ARE NOT PAYABLE FROM OR SECURED IN ANY WAY BY OTHER MONEYS OR ACCOUNTS OF THE AUTHORITY.

SECTION 7. 23-3.1-214, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

23-3.1-214. Exemption from taxation - securities law. The income or other revenues of the authority, INCLUDING INCOME EARNED ON THE INVESTMENT OF MONEYS IN THE PREPAID EXPENSE AND THE SAVINGS TRUST FUNDS, all properties at any time owned by the authority, any bonds, notes, or other obligations issued pursuant to this part 2, the transfer of and the income, including any profit made on sale, from any such bonds, notes, or other obligations, and all trust indentures and other documents issued in connection with such bonds, notes, or other obligations shall be exempt at all times from all taxation and assessments in the state of Colorado. In the bond resolution authorizing the issuance of any bonds by the authority, the board may waive the exemption from federal income taxation for interest on such bonds. Bonds issued by the authority shall also be exempt from the provisions of article 51 of title 11, C.R.S.

SECTION 8. 23-3.1-216, Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

23-3.1-216. Investment of funds. (3) IN ADDITION TO THE INVESTMENTS OTHERWISE PERMITTED IN THIS PART 2, THE AUTHORITY MAY INVEST MONEYS IN THE PREPAID EXPENSE AND THE SAVINGS TRUST FUNDS IN THE FOLLOWING:

- (a) STATE AND MUNICIPAL BONDS;
- (b) CORPORATE NOTES, BONDS, AND DEBENTURES, WHETHER OR NOT CONVERTIBLE, TO THE EXTENT PROVIDED FOR IN PARAGRAPH (d) OF THIS SUBSECTION (3);
- (c) PARTICIPATION AGREEMENTS WITH LIFE INSURANCE COMPANIES;
- (d) COMMON OR PREFERRED STOCK; EXCEPT THAT:
 - (I) NO INVESTMENT OF MONEYS IN THE PREPAID EXPENSE TRUST FUND OR THE SAVINGS TRUST FUND IN COMMON OR PREFERRED STOCK, OR BOTH, OF ANY CORPORATION SHALL BE OF AN AMOUNT THAT EXCEEDS FIVE PERCENT OF THE THEN BOOK VALUE OF SUCH TRUST FUND;
 - (II) NEITHER THE PREPAID EXPENSE TRUST FUND NOR THE SAVINGS TRUST FUND SHALL ACQUIRE MORE THAN FIVE PERCENT OF THE OUTSTANDING STOCK OR BONDS OF ANY SINGLE CORPORATION; AND

(III) THE AGGREGATE AMOUNT OF MONEYS OF THE PREPAID EXPENSE TRUST FUND OR SAVINGS TRUST FUND INVESTED IN COMMON OR PREFERRED STOCK, OR IN CORPORATE BONDS, NOTES, OR DEBENTURES WHICH ARE CONVERTIBLE INTO COMMON OR PREFERRED STOCK, OR IN INVESTMENT TRUST SHARES SHALL NOT EXCEED SIXTY PERCENT OF THE THEN BOOK VALUE OF EITHER FUND OR THE AGGREGATE OF THE FUNDS; AND

(e) ANY GUARANTEED INVESTMENT CONTRACT, GUARANTEED INTEREST CONTRACT, ANNUITY CONTRACT, OR FUNDING AGREEMENT IF THE BOARD DETERMINES BY RESOLUTION THAT:

(I) SUCH CONTRACT OR AGREEMENT MEETS THE STANDARD FOR INVESTMENTS ESTABLISHED IN SECTION 15-1-304, C.R.S.;

(II) THE INCOME ON SUCH CONTRACT OR AGREEMENT IS AT LEAST COMPARABLE TO THE INCOME THEN AVAILABLE ON THE OTHER INVESTMENTS PERMITTED IN THIS SECTION; AND

(III) SUCH CONTRACT OR AGREEMENT WILL ASSIST THE AUTHORITY IN MAINTAINING AN ACTUARIALLY SOUND TRUST FUND.

SECTION 9. 23-3.1-217, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

23-3.1-217. Proceeds as trust funds. All moneys received pursuant to this part 2, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, INCLUDING MONEYS RECEIVED UNDER ADVANCE PAYMENT CONTRACTS AND SAVINGS CONTRACTS, shall be deemed to be trust funds to be held and applied solely as provided in this part 2. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this part 2, subject to such regulations as the authority and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing such obligations provides.

SECTION 10. Part 2 of article 3.1 of title 23, Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

23-3.1-217.5. Claims of creditors - exemption. MONEYS CREDITED TO OR EXPENDED FROM THE PREPAID EXPENSE TRUST FUND OR THE SAVINGS TRUST FUND BY OR ON BEHALF OF A PURCHASER, DEPOSITOR, OR QUALIFIED BENEFICIARY OF AN ADVANCE PAYMENT CONTRACT OR A SAVINGS CONTRACT MADE UNDER THIS PART 2, WHICH CONTRACT HAS NOT BEEN TERMINATED, ARE EXEMPT FROM ALL CLAIMS OF CREDITORS OF THE PURCHASER, THE DEPOSITOR, THE QUALIFIED BENEFICIARY, OR THE AUTHORITY.

SECTION 11. 23-3.1-221, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

23-3.1-221. Account of activities - receipts for expenditures - report - audit. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures and shall report annually on such activities, receipts, and

expenditures in the month of February, to its members, to the governor, TO THE COMMISSION, and to the state auditor, in a form prescribed by the controller. Also included in the report shall be any recommendations with reference to additional legislation, ~~or~~ A FINANCIAL ANALYSIS OF THE ACTUARIAL SOUNDNESS OF THE PREPAID EXPENSE TRUST FUND AND THE SAVINGS TRUST FUND, AND other action that may be necessary to carry out the purposes of the authority. The state auditor may investigate the affairs of the authority and may examine the properties and records of the authority, and the controller may prescribe methods of accounting and the rendering of periodical reports in relation to undertakings by the authority. The authority shall adopt and prepare a budget for the next fiscal year in accordance with the bylaws of the authority. The fiscal year of the authority shall begin on October 1 and shall end on September 30.

SECTION 12. 23-7-103 (2), Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23-7-103. Presumptions and rules for determination of status. (2) To aid the institutions in deciding whether a student, a parent or guardian of the student, or the person who provides substantial support to the student is domiciled in Colorado, the following rules shall be applied:

(n) PARTICIPATION IN AN EDUCATION EXPENSE PROGRAM SHALL NOT BE CONSIDERED EVIDENCE OF DOMICILE IN THIS STATE OR IN ANOTHER STATE.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 1996