

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE MEMBERSHIP OF THE EDUCATION TRUST BOARD; PRESCRIBING POWERS AND DUTIES; PROVIDING FOR THIRD-PARTY MANAGERS; GRANTING IMMUNITY; CLARIFYING THAT LIABILITIES AND CONTRACTUAL OBLIGATIONS ARE NOT OBLIGATIONS OF THE STATE OR ANY OF ITS FUNDS; CREATING FUNDS; EXEMPTING FUNDS FROM CLAIMS OF CREDITORS; CHANGING REPORT REQUIREMENTS; ABOLISHING PREPAID TUITION CONTRACTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 21-21K-1 NMSA 1978 (being Laws 1997, Chapter 259, Section 1) is amended to read:

"21-21K-1. SHORT TITLE.--Chapter 21, Article 21K NMSA 1978 may be cited as the "Education Trust Act"."

SECTION 2. Section 21-21K-2 NMSA 1978 (being Laws 1997, Chapter 259, Section 2, as amended) is repealed and a new Section 21-21K-2 NMSA 1978 is enacted to read:

"21-21K-2. DEFINITIONS.--As used in the Education Trust Act:

A. "account" means an individual trust account pursuant to a college investment agreement entered into pursuant to the college savings program;

B. "account owner" means the person who has entered into a college investment agreement with the board and

is designated as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the beneficiary;

C. "beneficiary" means the person who is designated at the time the account is opened, or the person who replaces a designated beneficiary, as the person whose education expenses are expected to be paid from the account;

D. "board" means the education trust board;

E. "college investment agreement" means an agreement entered into by the board and an account owner to participate in the college savings program and establish an account to be used for the qualified higher education expenses of a beneficiary at an eligible institution of higher education;

F. "department" means the higher education department;

G. "financial institution" means a bank, broker-dealer, insurance company, mutual fund, savings and loan association or other financial entity;

H. "institution of higher education" means a post-secondary educational institution eligible to participate in student financial aid programs administered by the United States department of education;

I. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended; and

J. "manager" means a financial institution under contract with the board to serve as manager of a college savings plan in the college savings program and receive contributions on behalf of the program."

SECTION 3. Section 21-21K-3 NMSA 1978 (being Laws 1997, Chapter 259, Section 3, as amended) is repealed and a new Section 21-21K-3 NMSA 1978 is enacted to read:

"21-21K-3. COLLEGE SAVINGS PROGRAM CREATED--EDUCATION TRUST FUND CREATED--PURPOSE--INVESTMENT OF ACCOUNTS BY THIRD PARTIES--BOARD REVIEW--PROGRAM ADMINISTRATION FUND CREATED--PURPOSE.--

A. The "college savings program" is created to allow interested persons to enter into college investment agreements with the board as a means to save money to pay a beneficiary's eligible expenses for a college education. The college savings program may consist of one or more college savings plans. The board shall administer the college savings program through accounts established in the education trust fund pursuant to college investment agreements. Money in an account may be used by the beneficiary at any eligible institution of higher education in New Mexico or any other state.

B. The board shall develop and administer the college savings program in a manner that allows account owners and beneficiaries to obtain and maintain federal income tax

benefits or treatment provided by the Internal Revenue Code for qualified state tuition programs and exemptions under the federal securities laws.

C. The "education trust fund" is created as a nonreverting fund in the state treasury. The fund shall be administered by the board to carry out the college savings program. The fund consists of separate trust accounts held in the name of account owners. Income from investment of the fund shall be credited to the separate accounts.

D. The board may contract with one or more managers to invest the contributions deposited to the education trust fund. The board and the managers shall account for each contribution by an account owner.

E. Amounts may be withdrawn or transferred from trust accounts in the education trust fund only as provided in the related college investment agreements. All money contributed to accounts established in the fund are held in trust by the board and the respective managers for the sole benefit of the respective account owners and beneficiaries.

F. The "program administration fund" is created as a nonreverting fund in the state treasury. The fund consists of all administrative and other fees received by the board pursuant to college investment agreements and contracts with managers and any other money credited to the fund. The state treasurer shall invest the fund, and the investment income

shall be credited to the fund. Money in the fund may be used to pay costs of establishing, marketing and otherwise administering the college savings program in accordance with the Education Trust Act. Disbursements from the fund shall be by warrants of the secretary of finance and administration on vouchers signed by the director of the board or the director's authorized representative."

SECTION 4. Section 21-21K-4 NMSA 1978 (being Laws 1997, Chapter 259, Section 4, as amended) is amended to read:

"21-21K-4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS OF OFFICE.--

A. The "education trust board" is created. The board is administratively attached to the department, and the department shall provide administrative support for the board in carrying out its duties pursuant to the Education Trust Act. The board shall consist of the following voting members:

(1) the secretary of higher education or the secretary's designee, who shall be the ex-officio chair of the board;

(2) two members appointed by the governor;

(3) one member representing institutions of higher education appointed by the speaker of the house of representatives; and

(4) one member representing students at institutions of higher education, appointed by the president

pro tempore of the senate.

B. The appointed members must possess knowledge, skill and experience in higher education, business or finance.

C. The appointed members shall serve six-year terms, with the exception of the member representing students, who shall be appointed for a two-year term. Vacancies on the board shall be filled by the respective appointing authority for the remainder of the vacating member's term.

D. Three members of the board constitute a quorum. Action may be taken by the board upon an affirmative vote of the majority of members present at the meeting at which a quorum is present. A vacancy in the membership of the board does not impair the right of a quorum to exercise the powers and duties of the board.

E. Members of the board shall be subject to the provisions of the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their service on the board."

SECTION 5. A new section of the Education Trust Act is enacted to read:

"BOARD--POWERS AND DUTIES.--

A. The board may:

(1) adopt, amend or repeal and promulgate rules necessary to carry out the provisions of the Education Trust Act;

- (2) sue and be sued;
- (3) enter into contracts;
- (4) employ or contract for professional, technical and clerical staff and independent counsel;
- (5) contract with one or more financial institutions to manage the education trust fund and the separate trust accounts;
- (6) enter into college investment agreements with interested persons to participate in the college savings program;
- (7) charge, impose and collect administrative fees as provided in a college investment agreement or other contract relating to the college savings program in amounts not exceeding the reasonable costs of establishing, marketing and otherwise administering the program; and
- (8) do those things necessary or convenient in accordance with the Education Trust Act to carry out the provisions of that act.

B. The board shall adopt and promulgate education trust fund investment guidelines and otherwise administer the college savings program in compliance with the Uniform Prudent Investor Act."

SECTION 6. Section 21-21K-5 NMSA 1978 (being Laws 1997, Chapter 259, Section 5, as amended) is repealed and a new

Section 21-21K-5 NMSA 1978 is enacted to read:

"21-21K-5. COLLEGE INVESTMENT AGREEMENTS--ACCOUNTS.--

A. An account owner may enter into a college investment agreement with the board under which an account in the education trust fund is established and contributions may be made to the account from time to time, consistent with the terms of the agreement, to defray the cost of eligible higher education expenses at institutions of higher education. Each account shall be accounted for separately from all other accounts in the education trust fund. An account owner may enter into a college investment agreement on behalf of any beneficiary.

B. Gifts and bequests by persons other than the account owner may be made to an account in the education trust fund for the benefit of the beneficiary in accordance with the terms of the college investment agreement.

C. The board shall set forth procedures relating to the withdrawal of money from an account established in the education trust fund pursuant to a college investment agreement.

D. A college investment agreement may be terminated by the account owner at any time. The board shall specify by rule appropriate provisions for the term and termination of college investment agreements.

E. Contributions made to an account in the

education trust fund, together with accrued investment earnings and capital appreciation in such account, shall be excluded from any calculation of the respective beneficiary's student financial aid eligibility in New Mexico.

F. The board shall notify each account owner annually about the status of the account owner's account in the education trust fund."

SECTION 7. Section 21-21K-6 NMSA 1978 (being Laws 1997, Chapter 259, Section 6, as amended) is repealed and a new Section 21-21K-6 NMSA 1978 is enacted to read:

"21-21K-6. CLAIMS OF CREDITORS--EXEMPTION--LIABILITY IMMUNITY--STATE NOT LIABLE.--

A. Money credited to or expended from any account in the education trust fund by or on behalf of an account owner or beneficiary is exempt from all claims of creditors of the account owner, the beneficiary or the board.

B. If the board carries out its review responsibility of the manager's investment decisions consistent with the Uniform Prudent Investor Act, the board or an employee shall not be liable to anyone for any losses sustained as a result of investment decisions. A member of the board, while acting within the scope of the member's authority or while acting as a trustee of the education trust fund or any separate trust fund or account of the board, shall not be subject to any personal liability for any action taken

or omitted within that scope of authority.

C. In no event shall any liability of or contractual obligation incurred by the college savings program obligate or encumber any of the state's funds or treasury, including but not limited to the state's general fund, land grant permanent funds, the severance tax permanent fund or any other permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to fulfill the terms of any college investment agreement or any other obligation or liability out of any source other than the education trust fund or the program administration fund."

SECTION 8. Section 21-21K-7 NMSA 1978 (being Laws 1997, Chapter 259, Section 7, as amended) is amended to read:

"21-21K-7. REPORTS.--

A. The board shall annually submit to the governor and to the appropriate interim legislative committee a report including:

(1) the board's fiscal transactions during the preceding fiscal year;

(2) the market value of the education trust fund as of the end of the preceding fiscal year;

(3) the asset allocations of the education trust fund expressed in percentages of stocks, fixed income securities, cash or other financial assets; and

(4) the rate of return on the investment of the education trust fund's assets during the preceding fiscal year.

B. The board shall make the report described by Subsection A of this section available to account owners."
