

# The Vermont Statutes Online

## Title 16: Education

### *Chapter 87: GRANTS, SCHOLARSHIP, AND EDUCATION LOAN PROGRAMS*

#### *Sub-Chapter 07: Vermont Higher Education Investment Plan*

#### **§ 2875. Legislative findings and intent**

(a) The general welfare and well-being of the state are directly related to the educational levels and skills of its citizens.

(b) It is the policy of the state to advance postsecondary education opportunities by utilizing the state's limited resources in an effective, efficient and equitable manner.

(c) Given the cost of postsecondary education to students, families and the taxpayers of the state, it is in the public interest of the state to support supplemental means which will enable its citizens to pursue their educational aspirations.

(d) It is a valid and vital public purpose of the state to create a means of encouraging the savings and investing of funds for future postsecondary education, in compliance with the Internal Revenue Code of 1986, as amended.

(e) The implementation and effectuation of the Vermont higher education investment plan as provided by this subchapter furthers this public purpose. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2876 Definitions

As used in this subchapter, except where the context clearly requires another interpretation:

(1) "Beneficiary" means any individual designated by a participation agreement intended to benefit from payments for qualified postsecondary education costs ~~at an institution of postsecondary education~~

(2) "Benefits" means the payment of qualified postsecondary education costs on behalf of a beneficiary ~~from a participant's by the corporation's~~ investment plan account ~~during the beneficiary's attendance at an institution of postsecondary education~~.

(3) "Corporation" means Vermont student assistance corporation.

(4) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, together with the regulations promulgated thereunder.

(5) "Qualified postsecondary education costs" means the qualified costs of tuition and fees for attendance at an institution of post-secondary education, and also other costs treated as qualified higher education expenses ~~for attendance at an institution of post-secondary education, under as defined in by Section 529~~ of the Internal Revenue Code.

(6) "Approved post-secondary education institution" means an institution as defined in section 2822 of this title.

(7) "Vermont higher education investment plan" or "investment plan" means ~~the one or more such plans~~ programs created pursuant to this subchapter.

(8) "Participant" means a person who has entered into a participation agreement pursuant to this subchapter intended for the advance payment of future-qualified postsecondary education costs on behalf of a beneficiary.

(9) "Participation agreement" means an agreement between a participant and the corporation, pursuant to and conforming with the requirements of this subchapter. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2877 Vermont higher education investment plan created

(a) There is created a program of the state to be known as the Vermont higher education investment plan and a trust for that purpose to be administered by the Vermont student assistance corporation as an instrumentality of the state. The program may consist of one or more different investment plans, including one or more plans that may be offered to a participant only with the assistance of a qualified financial advisor.

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(b) In order to establish and administer the investment plan, the corporation, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement educational programs and related informational materials for participants and their families. Special efforts shall be made to contact families with young children and to reach individuals whose access to higher education opportunities has been limited;

(2) Enter into agreements with any approved institution of postsecondary education ~~institution~~, the state or any federal or other agency or any other entity as may be required for the operation of ~~the~~ an investment plan pursuant to this subchapter;

(3) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for ~~deposit contribution~~ to the account of the investment plan or for the operation thereof or other related purposes of the corporation;

(4) Invest the funds received from participants in appropriate investment vehicles approved and held in trust for participants by the corporation as selected ~~directed~~ by the participants, including education loans made by the corporation;

(5) Enter into participation agreements with participants;

(6) Develop and use two or more types of participation agreements to provide a range of investment ~~structures~~ options for participants;

(7) Make payments ~~to institutions of postsecondary education on behalf of beneficiaries as directed by the participants~~ pursuant to participation agreements;

(8) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this subchapter and the rules, policies, and procedures ~~and regulations~~ adopted by the corporation;

(9) Make provision for the payment of costs of administration and operation of any of the investment plans subject to the limitations on charges on participation agreements established in subdivision 2878(5) of this title;

(10) Adopt rules policies, and procedures ~~and regulations~~ to implement this subchapter and take all necessary action to ensure the investment plans are in conformance with the Internal Revenue Code and other applicable law; and

(11) Effectuate and carry out all of the powers granted by this subchapter, and have all other powers necessary to carry out and effectuate the purposes, objectives and provisions of this subchapter pertaining to the investment plan program, including the power to:

(A) Carry out studies and projections in order to advise participants regarding present and estimated future postsecondary education costs and levels of financial participation in the plan required in order to enable participants to achieve their educational funding objectives; and

(B) Procure insurance, guarantees or other protections against any loss in connection with the assets or activities of the investment plan. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2878 Participation agreements for investment plan

The corporation shall have the authority to enter into investment plan participation agreements with participants ~~on behalf of beneficiaries~~ pursuant to the provisions of this subchapter, including the following terms and agreements:

(1) A participation agreement shall stipulate the terms and conditions of the investment plan ~~to~~ which the participant makes ~~deposits~~ contributions;

(2) A participation agreement shall ~~specify clearly state its terms and conditions, including the method for calculating the return on the deposit made by the participant, which may be a variable or adjustable rate of return~~ various investment options and reference the relevant expenses and other pertinent information about the account;

(3) The execution of a participation agreement by the corporation shall not guarantee in any way that postsecondary education costs will be equal to projections and estimates provided by the corporation or that the beneficiary named in any participation agreement will be admitted to an institution of postsecondary education;

(4) A participation agreement shall clearly and prominently disclose to participants the risks associated with ~~depositing moneys with the corporation~~ the various investment options available under the applicable investment plan;

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public. A participation agreement shall clearly and prominently disclose to participants that neither the corporation or the state, or any other governmental entity is liable for or guarantees the return of, or on, their contributions to an investment plan and the existence of any load charge or similar charge assessed against the accounts of the participants for administration, operation or services. No fee or similar charge may be imposed with regard to an investment managed by the corporation. Any fee, load or similar charge with regard to any investment not managed by the corporation shall be no greater than the cost determined by the corporation that is required to administer the investment. The cost of originating and servicing any education loans made or acquired pursuant to participation agreements shall not be considered as load charges or similar charges; and

(6) Any investment advisory or management contract used with respect to a participation agreement shall be competitively bid pursuant to guidelines established by the secretary of

administration. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2878a Participation agreements for investment plan; individual development investment accounts

The corporation may participate in the individual development investment program established under section 1123 of Title 33, in accordance with the rules of the agency of human services adopted thereunder, in connection with an individual or family who, at the time of ~~depositing~~ contributing funds into an account created pursuant to a Vermont higher education investment plan, receives public assistance or is otherwise an eligible saver under section 1123 of Title 33. (Added 1999, No. 147 (Adj. Sess.), § 1a; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879 Investment and payments

All money paid by a participant in connection with ~~a participation agreements~~ shall be ~~deposited~~ credited to the participant's account as received, ~~held by the corporation in trust for the benefit of the participant,~~ and shall be promptly invested by the corporation ~~as selected~~ directed by the participant from the ~~in an investment options offered under the participation agreement by such investment plan.~~ Deposits ~~Contributions~~ and earnings thereon accumulated ~~in on behalf of a~~ participants in the investment plan investment plan account may be used, as provided in the participation agreement, including for payments ~~to any institution of~~ qualified postsecondary education ~~institutionseosts.~~ The trust shall continue in existence as long as it holds any funds belonging to a participant. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879a Cancellation of participation agreements

(a) Any participant may cancel a participation agreement at will, and any return of funds from the participant's account shall be subject to terms and conditions established by the corporation, provided that any penalties levied as a result comply with the Internal Revenue Code's provisions relating to investment plans.

(b) The corporation may provide by rule that no termination penalty shall apply in certain circumstances. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879b Effect of payments in computation and determination of financial aid need

Amounts available for the payment of postsecondary education costs pursuant to the investment plan shall be considered family assets of the beneficiary in determining need and eligibility for student aid as determined by applicable law. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879c Tax exemption

(a) The assets of the Vermont higher education investment plan held by the corporation and the assets of any similar plan qualified under Section 529 of the Internal Revenue Code and any income therefrom shall be exempt from all taxation by the state or any of its political subdivisions. Income earned or received from the fund by any participant or beneficiary shall not be subject to state income tax and shall be eligible for any benefits provided in accordance with the investment plan provisions of the Internal Revenue Code. The exemption from taxation under this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the Vermont higher education investment plan, the provisions of this subchapter, and the applicable provisions of the Internal Revenue Code. No exemption shall apply to assets and income expended for any other purposes.

(b) Contributions to an account held under ~~at~~ the Vermont higher education investment plan provided directly by the corporation to a participant shall be eligible for a credit against Vermont income tax as provided under section 5825a of Title 32. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. Jan. 1, 1999; amended 2001, No. 58, § 4, eff. June 16, 2001; 2003, No. 65, § 1.)

§ 2879d Property rights to assets in the plan

The assets of the Vermont higher education investment plan shall at all times be held trust for the benefit of the participant, shall not be commingled with any other funds of the corporation or the State and shall be preserved, invested and expended solely and only for the purposes set forth in this chapter and in accordance with the participation agreements, and no property rights therein shall exist in favor of the corporation or the state. Amounts so held in, or withdrawn from, a participant's investment plan account~~the under a participation agreement~~ shall not be subject to liens, attachment, garnishment, levy, seizure, claim by creditors of the contributors, participants or any beneficiary, or subject to any involuntary sale, transfer or assignment by any execution or any other legal or equitable operation of law, including bankruptcy or insolvency laws. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879e Construction and application

This subchapter shall be construed liberally in order to effectuate its legislative intent. The purposes of this subchapter and all provisions of this subchapter with respect to powers granted shall be broadly interpreted to effectuate such intent and purposes and not as to any limitation of powers. This subchapter shall be interpreted and enforced in a manner that shall achieve this public purpose in compliance with the applicable provisions of the Internal Revenue Code. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997.)

§ 2879f Annual reports

The corporation shall review, on an annual basis, the financial status of the program and the participation rate in the program. The corporation shall also review the continued viability of the program and the administration of the program by the corporation. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2009, No. 33, § 38.)

32 VSA § 5825a. Credit for Vermont higher education investment plan contributions

(a) A taxpayer of this State, including each spouse filing a joint return, shall be eligible for a nonrefundable credit against the tax imposed under section 5822 of this title of 10 percent of the first \$2,500.00 per beneficiary, contributed by the taxpayer during the taxable year to a Vermont higher education investment plan account under 16 V.S.A. chapter 87, subchapter 7 as provided in section 2879c(b) of that subchapter.