

**HOUSE BILL NO. 268**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MURKOWSKI, Therriault, Kemplen, Morgan, Dyson

Introduced: 1/10/00

Referred: Health, Education and Social Services, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Alaska Higher Education Savings Trust; and providing  
2 for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 14.40 is amended by adding a new section to read:

5 **Article 5A. Alaska Higher Education Savings Trust.**

6 **Sec. 14.40.802. Alaska Higher Education Savings Trust.** (a) The Alaska  
7 Higher Education Savings Trust is established in the University of Alaska. The Board  
8 of Regents of the University of Alaska shall

9 (1) administer, manage, promote, and market the trust;

10 (2) maintain the trust in compliance with United States Internal  
11 Revenue Service standards for a qualified state tuition program as the term is defined  
12 in 26 U.S.C. 529(b);

13 (3) establish application and withdrawal procedures and a participation  
14 agreement for trust participants;

1 (4) issue requests for proposals for multiple contractors to act as  
2 investment managers; in determining the best qualified persons to act as investment  
3 managers, the board shall consider the ability to

4 (A) administer financial programs with individual account  
5 maintenance and reporting;

6 (B) develop and administer an investment program with similar  
7 objectives to those of the trust; and

8 (C) augment the trust with other programs or services  
9 considered beneficial by the board;

10 (5) require trust participants to pay appropriate fees;

11 (6) operate the trust on a cash only basis, including provisions for  
12 automatic deductions;

13 (7) allow both residents and nonresidents to participate in the trust;

14 (8) allow funds deposited with the trust to be used for any qualified  
15 higher education expenses;

16 (9) establish a penalty on nonqualified withdrawals from the trust; the  
17 penalty established must satisfy the minimum penalty requirements of the United States  
18 Internal Revenue Service for nonqualified withdrawals from a qualified state tuition  
19 program.

20 (b) The board may

21 (1) divide the trust into multiple investment portfolios;

22 (2) commingle amounts credited to some or all accounts for investment  
23 purposes.

24 (c) The University of Alaska, the state, or an agency of the state is not liable  
25 for a loss of funds that are invested under a participation agreement. The board shall  
26 provide written notice to each applicant that the trust does not guarantee any rate of  
27 return and that any risk of loss in fund value rests with the participants.

28 (d) Notwithstanding any other provision of law, earnings on funds deposited  
29 with the trust are not subject to taxation by the state or a municipality.

30 (e) Funds deposited with the trust or earnings of the trust may not be  
31 considered by the University of Alaska or an agency of the state when determining

1 eligibility for a scholarship.

2 (f) A participant has the right at any time to

3 (1) change the beneficiary of an account to another individual who is  
4 a member of the family of the former beneficiary; or

5 (2) direct that all or a portion of an account be transferred to an  
6 account with a new beneficiary if the new beneficiary is a member of the family of  
7 the former beneficiary.

8 (g) The right to change the beneficiary or to transfer between accounts  
9 described in (f) of this section may be denied if, under regulations adopted by the  
10 board, the exercise of the right would result in either excess contributions to an  
11 account or would constitute an impermissible investment by the participant.

12 (h) An account established under this section

13 (1) is exempt from a claim by the creditors of a participant or of a  
14 beneficiary;

15 (2) is conclusively presumed to be a spendthrift trust;

16 (3) is not an asset or property of either the participant or the  
17 beneficiary;

18 (4) may not be assignable, pledged, or otherwise used to secure a loan  
19 or other advancement;

20 (5) is not subject to involuntarily transfer or alienation.

21 (i) Except as permitted in 26 U.S.C. 529, a participant or beneficiary may not  
22 directly or indirectly direct the investment of an account or earnings on the account.

23 (j) A participant may, at any time, designate a person other than the participant  
24 as a successor participant by executing and dating an instrument of designation and  
25 delivering it to the board. The designation of a successor participant does not take  
26 effect until the participant dies. If a participant dies without having effectively  
27 designated a successor participant, the beneficiary may designate a successor  
28 participant in the manner prescribed above if the beneficiary is not the same person  
29 as the successor participant.

30 (k) In this section,

31 (1) "account" means an individual trust account established under this

1 section;

2 (2) "beneficiary" means any person designated by a participation  
3 agreement, or by another method of designation authorized in this section, to benefit  
4 from payments for qualified higher education expenses at an eligible educational  
5 institution;

6 (3) "board" means the Board of Regents of the University of Alaska;

7 (4) "eligible educational institution" means an institution of higher  
8 education that meets the requirements established by the board consistent with  
9 26 U.S.C. 529(e);

10 (5) "member of the family" has the meaning given in 26 U.S.C. 529(e);

11 (6) "nonqualified withdrawal" means a withdrawal from an account that  
12 is not a

13 (A) qualified withdrawal;

14 (B) withdrawal made as the result of the death or disability of  
15 the designated beneficiary of an account; or

16 (C) withdrawal made as a result of receiving a scholarship;

17 (7) "participant" means a person who has entered into a participation  
18 agreement;

19 (8) "participation agreement" means an agreement between a participant  
20 and the board providing for the establishment by the participant of one or more  
21 accounts under this section and for the administration of those accounts for the benefit  
22 of the participant and the beneficiary;

23 (9) "qualified higher education expenses" has the meaning given in 26  
24 U.S.C. 529(e);

25 (10) "qualified withdrawal" means a withdrawal from an account to pay  
26 the qualified higher education expenses of the designated beneficiary of the account;

27 (11) "trust" means the Alaska Higher Education Savings Trust.

28 \* **Sec. 2.** AS 45.55.990(32) is amended to read:

29 (32) "security" means a note; stock; treasury stock; bond; debenture;  
30 evidence of indebtedness; certificate of interest or participation in any profit-sharing  
31 agreement; limited liability company interest under AS 10.50, notwithstanding the

1 limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate  
2 or subscription; transferable share; investment contract; voting-trust certificate;  
3 certificate of deposit for a security; certificate of interest or participation in an oil, gas,  
4 or mining title or lease or in payments out of production under the title or lease or in  
5 any sale of or indenture or bond or contract for the conveyance of land or any interest  
6 in land; an option on a contract for the future delivery of agricultural or mineral  
7 commodities or any other commodity offered or sold to the public and not regulated  
8 by the Commodity Futures Trading Commission; however, the contract or option is not  
9 subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a  
10 bona fide exchange or board of trade and offered or sold to the public by a broker-  
11 dealer or agent registered under this chapter; investment of money or money's worth  
12 including goods furnished or services performed in the risk capital of a venture with  
13 the expectation of some benefit to the investor where the investor has no direct control  
14 over the investment or policy decision of the venture; or, in general, any interest or  
15 instrument commonly known as a "security," or any certificate of interest or  
16 participation in, temporary or interim certificate for, receipt for, guarantee of, or  
17 warrant or right to subscribe to or purchase, any of the foregoing; "security" does not  
18 include **a participation agreement entered into under AS 14.40.802** or an insurance  
19 or endowment policy or annuity contract under which an insurance company promises  
20 to pay a fixed or variable sum of money either in a lump sum or periodically for life  
21 or for some other specified period;  
22 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).