

## CHAPTER 136G

### COLLEGE SAVINGS PLAN

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#### 136G.01 PLAN ESTABLISHED.

A college savings plan known as the Minnesota college savings plan is established. In establishing this plan, the legislature seeks to encourage individuals to save for postsecondary education by:

- (1) providing a qualified tuition plan under federal tax law; and
- (2) encouraging individuals, foundations, and businesses to provide additional grants to participating students.

**History:** 1997 c 183 art 2 s 12; 1Sp2001 c 1 art 3 s 2,23; 2003 c 133 art 3 s 4; 1Sp2011 c 5 art 2 s 5

#### 136G.03 DEFINITIONS.

Subdivision 1. **General.** For purposes of sections 136G.01 to 136G.14, the following terms have the meanings given.

Subd. 2. **Account.** "Account" means the formal record of transactions relating to a Minnesota college savings plan beneficiary.

Subd. 3. **Account owner.** "Account owner" means a person who enters into a participation agreement and is entitled to conduct transactions on the account, including selecting and changing the beneficiary of an account and receiving distributions from the account.

Subd. 4. **Adjusted gross income.** "Adjusted gross income" means adjusted gross income as defined in section 62 of the Internal Revenue Code.

Subd. 4a. **Application.** "Application" means the form executed by a prospective account owner to enter into a participation agreement and open an account in the plan. The application incorporates by reference the participation agreement.

Subd. 5. **Beneficiary.** "Beneficiary" means the designated beneficiary for the account, as defined in section 529(e)(1) of the Internal Revenue Code.

Subd. 6. **Board.** "Board" means the State Board of Investment.

Subd. 7. **Contingent account owner.** "Contingent account owner" means the person designated as the account owner, either in the participation agreement or pursuant to a separate Minnesota college savings plan form, in the event of the death of the account owner.

Subd. 8. **Contribution.** "Contribution" means a payment directly allocated to an account for the benefit of a beneficiary. For a rollover distribution, only the portion of the rollover amount that constitutes investment in the account is treated as a contribution to the account.

Subd. 9. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Office of Higher Education.

Subd. 10. **Distribution.** "Distribution" means a disbursement from an account to the account owner, the beneficiary, or the beneficiary's estate or to an eligible educational institution. Distribution does not include a change of beneficiary to a member of the family of the prior beneficiary or a rollover distribution.

Subd. 11. **Dormant account.** "Dormant account" means an account that has not received contributions for at least three consecutive years and the account statements mailed to the account owner have been returned as undeliverable.

Subd. 12. **Earnings.** "Earnings" means the total account balance minus the investment in the account.

Subd. 13. **Eligible educational institution.** "Eligible educational institution" means an institution as defined in section 529(e)(5) of the Internal Revenue Code.

Subd. 14. **Inactive account with a matching grant account.** "Inactive account with a matching grant account" means an account in which the beneficiary:

(1) is not the account owner, the beneficiary has reached 28 years of age, and the beneficiary has not informed the plan administrator that the beneficiary is enrolled in an eligible educational institution;

(2) is the account owner, the beneficiary was over the age of 18 when the account was opened, and the beneficiary has not informed the program administrator that the beneficiary is enrolled in an eligible educational institution within ten years of the date of opening the account; or

(3) is the account owner, the beneficiary was a minor when the account was opened, the account becomes inactive when the beneficiary turns 28 years of age, and the beneficiary has not informed the program administrator that the beneficiary is enrolled in an eligible educational institution.

Subd. 15. **Executive director.** "Executive director" means the executive director of the State Board of Investment.

Subd. 16. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

Subd. 17. **Investment in the account.** "Investment in the account" means the sum of all contributions made to an account by a particular date minus the aggregate amount of contributions included in distributions or rollover distributions, if any, made from the account as of that date.

Subd. 18. **Matching grant.** "Matching grant" means an amount added to a matching grant account under section 136G.11 for eligible account beneficiaries for account contributions in calendar years 2001 to 2010.

Subd. 19. **Matching grant account.** "Matching grant account" means an account owned by the state that contains matching grants and earnings.

Subd. 20. **Maximum account balance limit.** "Maximum account balance limit" means the amount established by the office under section 136G.09, subdivision 8, paragraph (d).

Subd. 21. **Member of the family.** "Member of the family" means an individual who is related to the beneficiary as defined in section 529(e)(2) of the Internal Revenue Code.

Subd. 21a. **Minor trust account.** "Minor trust account" means a Uniform Gift to Minors Act account or a Uniform Transfers to Minors Act account created and operating under the laws of Minnesota or another state.

Subd. 22. **Nonqualified distribution.** "Nonqualified distribution" means a distribution made from an account other than (1) a qualified distribution; or (2) a distribution due to the death or disability of, or scholarship to, or attendance at a United States military academy by, a beneficiary.

Subd. 23. **Office.** "Office" means the Minnesota Office of Higher Education.

Subd. 24. **Participation agreement.** "Participation agreement" means an agreement to participate in the Minnesota college savings plan between an account owner and the state, through its agencies, the office, and the board.

Subd. 25. [Repealed, 2003 c 133 art 3 s 28]

Subd. 26. **Person.** "Person" means an individual, trust, estate, partnership, association, company, corporation, or the state.

Subd. 27. **Plan.** "Plan" refers to the plan established under sections 136G.01 to 136G.14.

Subd. 28. **Plan administrator.** "Plan administrator" means the person selected by the office and the board to administer the daily operations of the Minnesota college savings plan and to provide marketing, record keeping, investment management, and other services for the program.

Subd. 29. **Qualified distribution.** "Qualified distribution" means a distribution made from an account for qualified higher education expenses of the beneficiary.

Subd. 30. **Qualified higher education expenses.** "Qualified higher education expenses" means expenses as defined in section 529(e)(3) of the Internal Revenue Code.

Subd. 31. **Rollover distribution.** "Rollover distribution" means a transfer of funds made:

- (1) from one account to another account within 60 days of a distribution;
- (2) from another qualified state tuition program to an account within 60 days of the distribution; or
- (3) to another qualified state tuition program from an account within 60 days of a distribution.

When there is a change of beneficiary in a rollover distribution, the transfer of funds must be made for the benefit of a new beneficiary who is a member of the family of the prior beneficiary. A rollover distribution from one qualified tuition plan to another once every 12 months without a change of beneficiary is permitted.

Subd. 32. **Scholarship.** "Scholarship" means a scholarship or educational assistance allowance.

Subd. 33. **State.** "State" means the state of Minnesota and any Minnesota agency or political subdivision of Minnesota.

Subd. 34. **Total account balance.** "Total account balance" means the amount in an account on a particular date or the fair market value of an account on a particular date.

**History:** 1997 c 183 art 2 s 13; 1Sp2001 c 1 art 3 s 3,23; 2002 c 220 art 5 s 8; 2002 c 379 art 1 s 48; 2003 c 133 art 3 s 5-7; 2005 c 107 art 2 s 33-36,60; 1Sp2011 c 5 art 2 s 6-8; 2012 c 270 s 9; 2013 c 99 art 2 s 29

### 136G.05 MINNESOTA OFFICE OF HIGHER EDUCATION.

Subdivision 1. **Responsibilities.** (a) The commissioner shall establish the rules, terms, and conditions for the plan, subject to the requirements of sections 136G.01 to 136G.14.

(b) The commissioner shall prescribe the application forms, procedures, and other requirements that apply to the plan.

Subd. 2. **Accounts-type plan.** The office must establish the plan and the plan must be operated as an accounts-type plan that permits persons to save for qualified higher education expenses incurred at any eligible educational institution, regardless of whether it is private or public or whether it is located within or outside of the state. A separate account must be maintained for each beneficiary for whom contributions are made.

Subd. 3. **Consultation with State Board of Investment.** In designing and establishing the plan's requirements and in negotiating or entering into contracts with third parties under subdivision 8, the commissioner shall consult with the executive director. The commissioner and the executive director shall establish an annual fee, equal to a percentage of the average daily net assets of the plan, to be imposed on participants to recover the costs of administration, record keeping, and investment management as provided in subdivision 9 and section 136G.07, subdivision 4.

Subd. 4. **Plan to comply with federal law.** The commissioner shall ensure that the plan meets the requirements for a qualified tuition program under section 529(b)(1)(A)(ii) of the Internal Revenue Code. The commissioner may request a private letter ruling or rulings from the Internal Revenue Service or take any other steps to ensure that the plan qualifies under section 529 of the Internal Revenue Code or other relevant provisions of federal law.

Subd. 5. **Nonqualified distributions and matching grants.** There cannot be a nonqualified withdrawal of matching grant funds and any refund of matching grants must be returned to the plan.

Subd. 6. **Three-year period for withdrawal of grants.** A matching grant deposited in a matching grant account based on account owner contributions during calendar years 2001 to 2010 under section 136G.11 may not be withdrawn within three years of the establishment of the account of the beneficiary. In calculating the three-year period, the period held in another account is included, if the account includes a rollover from another account under section 529(c)(3)(C) of the Internal Revenue Code.

Subd. 7. **Marketing.** The commissioner shall make parents and other interested individuals aware of the availability and advantages of the program as a way to save for higher education costs. The cost of these promotional efforts may not be funded with fees imposed on participants.

Subd. 8. **Administration.** The commissioner shall administer the program, including accepting and processing applications, maintaining account records, making payments, and undertaking any other necessary tasks to administer the program. The office may contract with one or more third parties to carry out some or all of these administrative duties, including providing incentives and marketing the program. The office and the board may jointly contract with third-party providers, if the office and board determine that it is desirable to contract with the same entity or entities for administration and investment management.

Subd. 9. **Authority to impose fees.** The office may impose annual fees, as provided in subdivision 3, on participants in the plan to recover the costs of administration. The office must use its best efforts to keep these fees as low as possible, consistent with efficient administration, so that the returns on savings invested in the plan will be as high as possible.

Subd. 10. **Data.** Account owner data, account data, and data on beneficiaries of accounts are private data on individuals or nonpublic data as defined in section 13.02, except that the names and addresses of the beneficiaries of accounts that receive matching grants are public.

**History:** 1997 c 183 art 2 s 14; 1999 c 214 art 2 s 8; 2001 c 202 s 9; 1Sp2001 c 1 art 3 s 4-9,23; 2003 c 133 art 3 s 8-10; 2005 c 107 art 2 s 37,60; 1Sp2011 c 5 art 2 s 9-11; 2013 c 99 art 2 s 29

### 136G.07 INVESTMENT OF ACCOUNTS.

Subdivision 1. **State board to invest.** The State Board of Investment shall invest the money deposited in accounts in the plan. Except as permitted by the Internal Revenue Code, neither persons making contributions to an account nor beneficiaries may direct the investment of contributions to the plan or plan earnings.

Subd. 2. **Permitted investments.** The board may invest the accounts in any permitted investment under section 11A.24, except that the accounts may be invested without limit in investment options from open-ended investment companies registered under the federal Investment Company Act of 1940, United States Code, title 15, sections 80a-1 to 80a-64.

Subd. 3. **Contracting authority.** The board may contract with one or more third parties for investment management, record keeping, or other services in connection with investing the accounts. The board and office may jointly contract with third-party providers, if the office and board determine that it is desirable to contract with the same entity or entities for administration and investment management.

Subd. 4. **Fees.** The board may impose annual fees, as provided in section 136G.05, subdivision 3, on participants in the plan to recover the cost of investment management and related tasks for the plan. The board must use its best efforts to keep these fees as low as possible, consistent with high quality investment management, so that the returns on savings invested in the plan will be as high as possible.

**History:** 1997 c 183 art 2 s 15; 1999 c 214 art 2 s 9; 1Sp2001 c 1 art 3 s 10,11,23; 2002 c 220 art 5 s 9

### 136G.09 PLAN ACCOUNTS; GENERALLY.

Subdivision 1. **Contributions to an account.** A person may make contributions to an account on behalf of a beneficiary. Contributions to an account made by persons other than the account owner become the property of the account owner. A person does not acquire an interest in an account by making contributions to an account. Contributions to an account must be made by check or other commercially acceptable means as permitted by the United States Internal Revenue Service and other applicable federal and state law and approved by the plan administrator in cooperation with the office and the board.

Subd. 2. **Authority of account owner.** Except as provided for minor trust accounts in section 136G.14, an account owner is the only person entitled to:

- (1) select or change a beneficiary or a contingent account owner; or
- (2) request distributions or rollover distributions from an account.

Subd. 3. **Security for loans.** An interest in an account or matching grant account must not be used as security for a loan.

Subd. 4. **Separate accounting.** The plan must provide a separate account for each beneficiary for whom contributions are made. Each account must have a single account owner and a single beneficiary. An account owner must not open more than one account for the same beneficiary, but several account owners may open accounts for the same beneficiary.

Subd. 5. **Naming of beneficiary.** The account owner must designate the beneficiary of an account when the account is established, except for accounts established under section 529(e)(1)(C) of the Internal Revenue Code, which do not require a designated beneficiary until a distribution is made.

Subd. 6. **Change of beneficiary.** Except as provided for minor trust accounts in section 136G.14, an account owner may change the beneficiary of an account to a member of the family of the current beneficiary, at any time without penalty, if the change will not cause the total account balance of all accounts held for the new beneficiary to exceed the maximum account balance limit as provided in subdivision 8. A change of beneficiary other than as permitted in this subdivision is treated as a nonqualified distribution under section 136G.13, subdivision 3.

Subd. 7. **Change of account ownership.** Except as provided for minor trust accounts in section 136G.14, an account owner may transfer ownership of an account to another person eligible to be an account owner. All transfers of ownership are absolute and irrevocable.

Subd. 8. **Maximum account balance limit.** (a) When a contribution is made, the total account balance of all accounts held for the same beneficiary, including matching grant accounts, must not exceed the maximum account balance limit as determined under this subdivision.

(b) The office must establish a maximum account balance limit. The office must adjust the maximum account balance limit, as necessary, or on January 1 of each year. The maximum account balance limit must not exceed the amount permitted for the plan to qualify as a qualified tuition program under section 529 of the Internal Revenue Code. For calendar years 2004 and 2005, the maximum account balance limit is \$235,000.

(c) If the total account balance of all accounts held for a single beneficiary reaches the maximum account balance limit prior to the end of that calendar year, the beneficiary may receive an applicable matching grant for that calendar year.

Subd. 9. **Excess contributions and balances.** A contribution to any account for a beneficiary must be rejected if the contribution would cause the total account balance of all accounts held for the same beneficiary, including the matching grant account, to exceed the maximum account balance limit under section 529 of the Internal Revenue Code as established by the office.

Subd. 10. **Dormant accounts.** (a) The plan administrator shall attempt to locate the account owner or the beneficiary, or both, to determine the disposition of a dormant account. A fee of five percent of the total account balance of the dormant account, not to exceed \$100, plus allowable costs, may be charged for this service. Costs will not exceed \$100 or five percent of the total account balance in the dormant account, whichever is less.

(b) If the account owner, or the account owner's legal heirs, are not found after three attempts by the plan administrator, the remaining funds in the dormant account must be turned over to the office. The funds are treated as unclaimed property for purposes of sections 345.31 to 345.60, and the office shall turn all remaining dormant account funds over to the commissioner of commerce. If the dormant account has a matching grant account, all amounts in the beneficiary's matching grant account, if any, must be returned to the office.

Subd. 11. **Effect of plan changes on participation agreement.** Amendments to sections 136G.01 to 136G.13 automatically amend the participation agreement. Any amendments to the operating procedures and policies of the plan shall automatically amend the participation agreement after adoption by the office or the board.

Subd. 12. **Special account to hold plan assets in trust.** All assets of the plan, including contributions to accounts and matching grant accounts and earnings, are held in trust for the exclusive benefit of account owners and beneficiaries. Assets must be held in a separate account in the state treasury to be known as the Minnesota college savings plan account or in accounts with the third-party provider selected pursuant to section 136G.05, subdivision 8. Plan assets are not subject to claims by creditors of the state, are not part of the general fund, and are not subject to appropriation by the state. Payments from the Minnesota college savings plan account shall be made under sections 136G.01 to 136G.13.

**History:** *1Sp2001 c 1 art 3 s 12,23; 2002 c 220 art 5 s 10; 2003 c 133 art 3 s 11-16; 2005 c 107 art 2 s 38,39*

### 136G.11 MATCHING GRANTS.

Subdivision 1. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 2. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 3. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 4. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 5. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 6. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 7. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 8. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 9. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 10. [Repealed, 1Sp2011 c 5 art 2 s 15]

Subd. 11. **Ownership of matching grant funds.** The state retains ownership of all matching grants and earnings on matching grants until a qualified distribution is made to a beneficiary or an eligible educational institution.

Subd. 12. **Inactive accounts with matching grants.** (a) The plan administrator will attempt to locate the account owner or the beneficiary of an inactive account with a matching grant to determine the disposition of the account. No fee will be charged for this service. The matching grants and matching grant earnings in the account must be returned to the office, unless the account owner applies for a deferment or the beneficiary begins attending an eligible educational institution within one year of the date of notification.

(b) The account owner may apply to the plan administrator for a deferment of inactive account time limits. Upon application, the plan administrator shall grant a onetime deferment of two years. In addition, the plan administrator shall grant a deferment for the beneficiary's initial enlistment for active duty in the armed forces of the United States, or for the period of active military duty required as part of the beneficiary's obligation as a member in a reserve military unit of the armed forces of the United States.

Subd. 13. **Forfeiture of matching grants.** (a) Matching grants are forfeited if:

(1) the account owner transfers the total account balance of an account to another account or to another qualified tuition program;

(2) the beneficiary receives a full tuition scholarship or is attending a United States service academy;

(3) the beneficiary dies or becomes disabled;

(4) the account owner changes the beneficiary of the account; or

(5) the account owner closes the account with a nonqualified withdrawal.

(b) Matching grants must be proportionally forfeited if:

(1) the account owner transfers a portion of an account to another account or to another qualified tuition program;

(2) the beneficiary receives a scholarship covering a portion of qualified higher education expenses; or

(3) the account owner makes a partial nonqualified withdrawal.

(c) If the account owner makes a misrepresentation in a participation agreement or an application for a matching grant that results in a matching grant, the matching grant associated with the misrepresentation is forfeited. The office and the board must instruct the plan administrator as to the amount to be forfeited from the matching grant account. The office and the board must withdraw the matching grant or the proportion of the matching grant that is related to the misrepresentation.

**History:** 1997 c 183 art 2 s 16; 1999 c 214 art 2 s 10; 1Sp2001 c 1 art 3 s 13-21,23; 2003 c 133 art 3 s 17-21; 2005 c 107 art 2 s 40-43; 2007 c 144 art 2 s 43; 2008 c 363 art 4 s 9

### 136G.13 ACCOUNT DISTRIBUTIONS.

Subdivision 1. **Qualified distribution methods.** (a) Qualified distributions may be made:

(1) directly to participating eligible educational institutions on behalf of the beneficiary;

(2) in the form of a check payable to both the beneficiary and the eligible educational institution; or

(3) directly to the account owner or beneficiary if the account owner or beneficiary has already paid qualified higher education expenses.

(b) Qualified distributions must be withdrawn proportionally from contributions and earnings in an account owner's account on the date of distribution as provided in section 529 of the Internal Revenue Code.

Subd. 2. **Matching grant accounts.** Qualified distributions are based on the total account balances in an account owner's account and matching grant account, if any, on the date of distribution. Qualified distributions must be withdrawn proportionally from each account based on the relative total account balance of each account to the total account balance for both accounts. Amounts for matching grants and matching grant earnings must only be distributed for qualified higher education expenses.

Subd. 3. **Nonqualified distribution.** An account owner may request a nonqualified distribution from an account at any time. Nonqualified distributions are based on the total account balances in an account owner's account and must be withdrawn proportionally from contributions and earnings as provided in section 529 of the Internal Revenue Code. The earnings portion of a



nonqualified distribution is subject to a federal additional tax pursuant to section 529 of the Internal Revenue Code. For purposes of this subdivision, "earnings portion" means the ratio of the earnings in the account to the total account balance, immediately prior to the distribution, multiplied by the distribution.

Subd. 4. **Nonqualified distributions from matching grant accounts.** (a) If an account owner requests a nonqualified distribution from an account that has a matching grant account, the total account balance of the matching grant account, if any, is reduced.

(b) After the nonqualified distribution is withdrawn from the account including any penalty as provided in subdivision 3, the account owner forfeits matching grant amounts in the same proportion as the nonqualified distribution is to the total account balance of the account.

Subd. 5. **Distributions due to death or disability of, or scholarship to, or attendance at a United States military academy by, a beneficiary.** An account owner may request a distribution due to the death or disability of, or scholarship to, or attendance at a United States military academy by, a beneficiary from an account by submitting a completed request to the plan. Prior to distribution, the account owner shall certify the reason for the distribution and provide written confirmation from a third party that the beneficiary has died, become disabled, or received a scholarship for attendance at an eligible educational institution, or is attending a United States military academy. The plan must not consider a request to make a distribution until a third-party written confirmation is received by the plan. For purposes of this subdivision, a third-party written confirmation consists of the following:

(1) for death of the beneficiary, a certified copy of the beneficiary's death record;

(2) for disability of the beneficiary, a certification by a physician who is a doctor of medicine or osteopathy stating that the doctor is legally authorized to practice in a state of the United States and that the beneficiary is unable to attend any eligible educational institution because of an injury or illness that is expected to continue indefinitely or result in death. Certification must be on a form approved by the plan;

(3) for a scholarship award to the beneficiary, a letter from the grantor of the scholarship or from the eligible educational institution receiving or administering the scholarship, that identifies the beneficiary by name and Social Security number or taxpayer identification number as the recipient of the scholarship and states the amount of the scholarship, the period of time or number of credits or units to which it applies, the date of the scholarship, and, if applicable, the eligible educational institution to which the scholarship is to be applied; or

(4) for attendance by the beneficiary at a United States military academy, a letter from the military academy indicating the beneficiary's enrollment and attendance.

**History:** *1Sp2001 c 1 art 3 s 22,23; 1Sp2001 c 9 art 15 s 32; 2003 c 133 art 3 s 22,23; 2005 c 107 art 2 s 44,45*

#### **136G.14 MINOR TRUST ACCOUNTS.**

(a) This section applies to a plan account in which funds of a minor trust account are invested.

(b) The account owner may not be changed to any person other than a successor custodian or the beneficiary unless a court order directing the change of ownership is provided to the plan administrator. The custodian must sign all forms and requests submitted to the plan administrator in the custodian's representative capacity. The custodian must notify the plan administrator in

writing when the beneficiary becomes legally entitled to be the account owner. An account owner under this section may not select a contingent account owner.

(c) The beneficiary of an account under this section may not be changed. If the beneficiary dies, assets in a plan account become the property of the beneficiary's estate. Funds in an account must not be transferred or rolled over to another account owner or to an account for another beneficiary. A nonqualified distribution from an account, or a distribution due to the disability or scholarship award to the beneficiary, or made on account of the beneficiary's attendance at a United States military academy, must be used for the benefit of the beneficiary.

**History:** 2003 c 133 art 3 s 24; 2005 c 107 art 2 s 46