



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 19

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S.P. 26

In Senate, January 13, 2021

### An Act To Amend the Maine Education Savings Program

(EMERGENCY)

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Submitted by the Finance Authority of Maine pursuant to Joint Rule 204.

Received by the Secretary of the Senate on January 11, 2021. Referred to the Committee on Innovation, Development, Economic Advancement and Business pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator DAUGHTRY of Cumberland.

1           **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the Legislature established the Maine Education Savings Program, also  
4 known as NextGen 529, as Maine's Section 529 plan, so-called after Section 529 of the  
5 federal Internal Revenue Code of 1986, to be administered by the Finance Authority of  
6 Maine; and

7           **Whereas,** the Maine Education Savings Program provides account owners and  
8 beneficiaries the opportunity to realize potential tax advantages if assets are used for  
9 qualified higher education expenses; and

10          **Whereas,** the United States Congress has recently expanded the federal definition of  
11 "qualified higher education expenses" to include certain expenses related to registered and  
12 certified apprenticeship programs and limited repayments of qualified education loans; and

13          **Whereas,** under the Maine Revised Statutes, Title 20-A, section 11483, the Finance  
14 Authority of Maine is authorized to take necessary action to ensure that the Maine  
15 Education Savings Program complies with federal law, and the authority considers it  
16 prudent to make statutory changes to conform with the expanded federal definition and to  
17 make certain other amendments to the law; and

18          **Whereas,** in order to avoid confusion in the application and use of the Maine  
19 Education Savings Program, it is necessary that these conforming changes take effect as  
20 soon as possible; and

21          **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
22 the meaning of the Constitution of Maine and require the following legislation as  
23 immediately necessary for the preservation of the public peace, health and safety; now,  
24 therefore,

25          **Be it enacted by the People of the State of Maine as follows:**

26          **Sec. 1. 20-A MRSA §11471,** as amended by PL 2017, c. 474, Pt. F, §§2, 3 and 9,  
27 is further amended to read:

28          **§11471. Definitions**

29          As used in this chapter, unless the context otherwise indicates, the following terms  
30 have the following meanings.

31          **1. Advisory committee.** "Advisory committee" means the Advisory Committee on  
32 Education Savings established in this chapter.

33          **2. Authority.** "Authority" means the Finance Authority of Maine, which serves as  
34 administrator of the Maine Education Savings Program.

35          **3. Beneficiary.** "Beneficiary" means any person designated by a participation  
36 agreement to benefit from payments for higher education expenses ~~at an institution of~~  
37 ~~higher education.~~

38          **4. Benefits.** ~~"Benefits" means the payment of higher education expenses on behalf of~~  
39 ~~a beneficiary by the Maine Education Savings Program during the beneficiary's attendance~~  
40 ~~at an institution of higher education.~~

1           **5. Board.** "Board" means the board of directors of the Finance Authority of Maine.

2           **6. Contributions.** "Contributions" means amounts deposited by a participant to an  
3 account within the program fund.

4           **7. Higher education expenses.** "Higher education expenses" means the certified  
5 expenses for attendance at an institution of higher education as those expenses are defined  
6 by rule of the authority consistent with applicable provisions of the federal Internal  
7 Revenue Code of 1986 and its regulations addressing qualified ~~state~~ tuition programs.  
8 Beginning January 1, 2018, "higher education expenses" has the same meaning as  
9 "qualified higher education expenses" as defined in Section 529 of the federal Internal  
10 Revenue Code of 1986 and amendments to that Code and its regulations addressing  
11 qualified ~~state~~ tuition programs.

12           **8. Institution of higher education.** "Institution of higher education" means an  
13 institution of higher education that meets the requirements established by rule of the  
14 authority consistent with applicable provisions of the federal Internal Revenue Code of  
15 1986 and its regulations addressing qualified ~~state~~ tuition programs.

16           **9. Participant.** "Participant" means any person who has entered into a participation  
17 agreement pursuant to this chapter.

18           **10. Participation agreement.** "Participation agreement" means an agreement  
19 between a participant and the authority providing for the establishment by the participant  
20 of one or more accounts within the program fund and for the administration of those  
21 accounts for the benefit of the participant and of one or more beneficiaries.

22           **11. Program earnings.** "Program earnings" means all interest, dividends, premiums,  
23 fees, profits upon disposition of assets and other revenue actually received by or on behalf  
24 of the program with respect to any assets held within the program fund to which that asset  
25 may be credited, less all administrative costs of the program and the program fund, as  
26 periodically determined by the authority.

27           ~~**12. Tuition.** "Tuition" means the charges imposed to attend an institution of higher  
28 education and required as a condition of enrollment.~~

29           **Sec. 2. 20-A MRSA §11472**, as amended by PL 2017, c. 474, Pt. F, §4, is further  
30 amended to read:

31 **§11472. Maine Education Savings Program**

32           The Maine Education Savings Program, referred to in this chapter as the "program," is  
33 established to encourage the investment of funds to be used for higher education expenses  
34 at institutions of higher education and, beginning January 1, 2018, and as long as permitted  
35 by provisions of Section 529 of the federal Internal Revenue Code of 1986, expenses for  
36 tuition in connection with enrollment or attendance at an elementary or secondary public,  
37 private or religious school. The authority shall administer the program and act as  
38 administrator of the program fund.

39           **Sec. 3. 20-A MRSA §11474, sub-§2**, as amended by PL 2011, c. 150, §3 and  
40 affected by §9, is further amended to read:

41           **2. Invest funds.** With the advice of the advisory committee, invest and reinvest, or  
42 cause to be invested and reinvested, money in the program fund in any investments  
43 determined by the authority to be appropriate, notwithstanding any general statutory

1 limitations on investments of public funds specifically determined to be inapplicable to the  
2 program fund. The authority ~~must~~ may invest, or cause to be invested, money from the  
3 program fund in financial institutions located in the State to the extent determined  
4 reasonable by the authority;

5 **Sec. 4. 20-A MRSA §11475, sub-§11**, as enacted by PL 1997, c. 732, §4, is  
6 amended to read:

7 **11. No guaranty of admission.** The execution of a participation agreement by the  
8 authority does not guarantee in any way that higher education expenses will be equal to  
9 projections and estimates provided by the authority or that the beneficiary named in any  
10 participation agreement will:

11 A. Be admitted to ~~an~~ any elementary or secondary school, apprenticeship program or  
12 institution of higher education;

13 B. Be allowed to continue attendance at ~~the~~ any elementary or secondary school,  
14 apprenticeship program or institution of higher education following admission; or

15 C. Graduate from ~~the~~ any elementary or secondary school, apprenticeship program or  
16 institution of higher education.

17 **Sec. 5. 20-A MRSA §11476**, as amended by PL 2011, c. 150, §4 and affected by  
18 §9, is further amended to read:

19 **§11476. Investment options and parameters**

20 The authority, with the advice of the advisory committee, may provide investment  
21 options for a participant within the program fund to the extent permitted by federal Internal  
22 Revenue Code of 1986 provisions addressing qualified ~~state~~ tuition programs. The  
23 authority, with the advice of the advisory committee, shall invest, or cause to be invested,  
24 the amounts on deposit in the program fund in a reasonable manner to achieve the  
25 objectives of each fund, exercising the discretion and care of a prudent person in similar  
26 circumstances with similar objectives. A participant or designated beneficiary may not  
27 direct the investment of any amounts on deposit in the program fund, except to the extent  
28 allowed pursuant to provisions of the federal Internal Revenue Code of 1986 addressing  
29 qualified ~~state~~ tuition programs. The authority shall give due consideration to rate of return,  
30 term or maturity, diversification and liquidity of investments within the program fund or  
31 any account in the program fund pertaining to the projected disbursements and  
32 expenditures from the program fund and the expected payments, deposits, contributions  
33 and gifts to be received.

34 **Sec. 6. 20-A MRSA §11478, sub-§1**, as enacted by PL 1997, c. 732, §4, is amended  
35 to read:

36 **1. Participant retains ownership.** The participant retains ownership of all  
37 contributions and all program earnings credited to a participant's account under a  
38 participation agreement up to the date of utilization for payment of higher education  
39 expenses ~~for the beneficiary~~ and, notwithstanding any other provision of law, an amount  
40 credited to any account is not susceptible to levy, execution, judgment or other operation  
41 of law, garnishment or other judicial enforcement and the amount is not an asset or property  
42 of either the participant or the beneficiary for purposes of any state insolvency laws.  
43 Notwithstanding this subsection, an amount credited to the participant's account may not

1 be included in any gross estate of the participant for purposes of state tax law, except to the  
2 extent that the amount may be includable in any gross estate for purposes of federal tax  
3 law.

4 **Sec. 7. 20-A MRSA §11479**, as amended by PL 2017, c. 474, Pt. F, §6, is further  
5 amended to read:

6 **§11479. Tax exemption**

7 The assets of the program fund, all program earnings and any income from operations  
8 are exempt from all taxation by the State or any of its political subdivisions. A deposit to  
9 any account, transfer of that account to a successor participant, designation of a successor  
10 beneficiary of that account, credit of program earnings to that account or qualified  
11 distribution from that account used for the purpose of paying higher education expenses of  
12 ~~the designated beneficiary of that account~~ pursuant to this chapter, as long as that  
13 distribution does not exceed the limits established in Section 529 of the federal Internal  
14 Revenue Code of 1986, as amended, or rollover distributions permitted under Section 529  
15 of the federal Internal Revenue Code of 1986, as amended, does not subject that participant,  
16 the estate of that participant or any beneficiary to any state income or estate tax liability.  
17 In the event of cancellation or termination of a participation agreement and distribution of  
18 funds to a participant, the increase in value over the amount deposited in the program fund  
19 by that participant may be taxable to that participant in the year distributed.

20 **Sec. 8. 20-A MRSA §11483**, as enacted by PL 1997, c. 732, §4, is amended to read:

21 **§11483. Compliance with federal law**

22 The authority may take any action necessary to ensure that the program complies with  
23 the federal Internal Revenue Code of 1986, Section 529, as amended, and any successor  
24 provisions and other applicable laws, rules and regulations adopted pursuant to that  
25 provision to the extent necessary for the program fund to constitute a qualified state tuition  
26 program with the benefits of eligibility under provisions of the federal Internal Revenue  
27 Code of 1986 addressing qualified state tuition programs.

28 **Sec. 9. 20-A MRSA §11485**, as enacted by PL 1997, c. 732, §4, is amended to read:

29 **§11485. Rulemaking**

30 The authority ~~must~~ shall establish rules for the implementation of the program  
31 established by this chapter, including rules establishing fees and penalties and rules  
32 necessary to ensure treatment as a qualified state tuition program for federal tax purposes.  
33 Rules adopted pursuant to this section, including those setting fees and penalties, are  
34 routine technical rules as defined by Title 5, chapter 375, subchapter H-A 2-A. ~~The~~  
35 ~~authority shall submit a report to the joint standing committee of the Legislature having~~  
36 ~~jurisdiction over education and cultural affairs by January 30, 1999 on the rules and rule-~~  
37 ~~making process to implement a program providing limits on future increases in the costs of~~  
38 ~~education of participating institutions of higher education pursuant to section 11474,~~  
39 ~~subsection 8.~~

40 **Emergency clause.** In view of the emergency cited in the preamble, this legislation  
41 takes effect when approved.

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## **SUMMARY**

This bill conforms elements of the Maine Education Savings Program to recent changes to federal law affecting so-called Section 529 plans. It also makes certain other needed updates to the program and makes permissive rather than mandatory the investment of program fund dollars by the Finance Authority of Maine in state-based financial institutions.