

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SENATE BILL 1012

## AN ACT

AMENDING SECTIONS 15-1851, 15-1852, 15-1853, 15-1854, 15-1855, 15-1871, 15-1874 AND 15-1875, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3008.14, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3018.14; RELATING TO THE COMMISSION ON POSTSECONDARY EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1851, Arizona Revised Statutes, is amended to  
3 read:

4 15-1851. Commission for postsecondary education; purpose;  
5 report; members; terms; powers and duties;  
6 compensation; quorum; personal liability; definition

7 ~~A. The commission for postsecondary education is established as the~~  
8 ~~postsecondary review entity for this state for the conduct, supervision and~~  
9 ~~coordination of the review of postsecondary education institutions in order~~  
10 ~~to determine the eligibility of those institutions for student financial aid~~  
11 ~~monies pursuant to the provisions of part H, subpart one of the higher~~  
12 ~~education amendments of 1992 (P.L. 102-325; 106 Stat. 638; 20 United States~~  
13 ~~Code section 1099a). The commission shall accomplish the purpose of this~~  
14 ~~subsection through the accumulation of information, the performance of~~  
15 ~~studies and the determination of compliance by the postsecondary education~~  
16 ~~institutions with the provisions of part H, subpart one of the higher~~  
17 ~~education amendments of 1992. The review authority of the commission shall~~  
18 ~~be limited to circumstances where the United States department of education~~  
19 ~~has referred an institution to the commission for review or where the United~~  
20 ~~States department of education has approved the review of an institution in~~  
21 ~~accordance with criteria established by the United States department of~~  
22 ~~education. The commission shall keep records of its activities, and the~~  
23 ~~commission shall provide information when requested to the United States~~  
24 ~~secretary of education for financial and compliance audits and for~~  
25 ~~institution evaluation. The scope of authority of the commission acting as a~~  
26 ~~postsecondary review entity to review any educational institution is limited~~  
27 ~~specifically to compliance by the institution with title IV, part H, subpart~~  
28 ~~one of the higher education amendments of 1992. Any review of any~~  
29 ~~institution conducted by the commission shall be performed in the context of~~  
30 ~~the institution's individual mission and purposes. The commission shall not~~  
31 ~~exercise planning, policy, coordinating, supervisory, budgeting or~~  
32 ~~administrative powers over any postsecondary institution in this state.~~

33 ~~B.~~ A. The commission FOR POSTSECONDARY EDUCATION IS ESTABLISHED AND  
34 shall ~~also~~ administer the applicable programs identified under section 1203  
35 of the higher education act amendments of 1998 (P.L. 105-244), including the  
36 leveraging educational assistance partnership program, the federal family  
37 education loan program and the Paul Douglas teacher scholarships program, and  
38 shall supervise the state guarantee agency under the higher education act  
39 amendments of 1998.

40 ~~C.~~ B. In addition to the responsibilities prescribed in ~~subsections A~~  
41 ~~and B-~~ SUBSECTION A of this section, the commission shall:

42 1. Provide a forum to public and private postsecondary education  
43 institutions for discussion of issues of mutual interest, including the  
44 following:

1 (a) The postsecondary needs of unserved and underserved individuals in  
2 this state.

3 (b) The resources of public and private institutions, organizations  
4 and agencies that are located in this state and that are capable of providing  
5 postsecondary education opportunities.

6 (c) Enrollment demand and public policy options to meet statewide  
7 needs for postsecondary education services.

8 (d) Cooperative comprehensive instructional and capital planning.

9 2. Provide reports pursuant to this subsection on discussions of  
10 issues of mutual interest.

11 3. Coordinate and promote collaborative studies on issues of mutual  
12 interest to public and private postsecondary education institutions.

13 4. Compile and disseminate information to the public regarding  
14 postsecondary education opportunities in this state.

15 5. Prepare an annual report that summarizes the results of the  
16 commission's activities prescribed in this section and section 15-1852. The  
17 annual report shall be submitted to the speaker of the house of  
18 representatives, the president of the senate, the governor and the Arizona  
19 state library, archives and public records by December 28.

20 ~~D.~~ C. The commission consists of the executive director of the  
21 Arizona board of regents, the executive director of the state board for  
22 private postsecondary education and the following additional members who  
23 shall be appointed by the governor pursuant to section 38-211:

24 1. Two members who hold senior executive or managerial positions in a  
25 university under the jurisdiction of the Arizona board of regents.

26 2. Two members who hold senior executive or managerial positions in a  
27 community college district, one representing a community college district in  
28 a county with a population of five hundred thousand persons or more and one  
29 representing a community college district in a county with a population of  
30 less than five hundred thousand persons.

31 3. Two members who hold senior executive or managerial positions in  
32 private postsecondary institutions of higher education that are licensed  
33 under title 32, chapter 30, that are located in this state, that offer  
34 bachelor or higher degrees and that are accredited by a regional  
35 accreditation agency approved by the United States department of education.

36 4. Two members who hold senior executive or managerial positions in  
37 private postsecondary institutions of higher education that are licensed  
38 under title 32, chapter 30, that are located in this state, that offer  
39 vocational education programs and that are accredited by a national  
40 accreditation agency approved by the United States department of education.

41 5. One member who holds a senior executive or managerial position in a  
42 private cosmetology school that is licensed under title 32, chapter 5, that  
43 is located in this state, that offers cosmetology programs approved by the  
44 board of cosmetology and that is accredited by a national accreditation  
45 agency approved by the United States department of education.

1           6. One member who holds a senior executive or managerial position in  
2 an institution that is licensed under title 32, chapter 23 or under the  
3 provisions of 14 Code of Federal Regulations part 147, that offers vocational  
4 education programs at the postsecondary level, that is located in this state  
5 and that is not an institution that is qualified under any other category.

6           7. One member who has held a senior executive or managerial level  
7 position in commerce or industry in this state for at least three years  
8 before the member's appointment and who is not qualified to serve under any  
9 other category.

10          8. Two members who hold senior executive or managerial positions in  
11 the high school education system in this state.

12          9. One member who is an owner, operator or administrator of a charter  
13 school in this state.

14          ~~E.~~ D. Members of the commission appointed pursuant to subsection ~~D-~~  
15 C, paragraphs 1 through 9 of this section shall serve four year terms.  
16 Appointed members of the commission shall be residents of this state.  
17 Appointed members of the commission at all times during their terms shall  
18 continue to be eligible for appointment under the category that they were  
19 appointed to represent. Terms of appointed members of the commission begin  
20 on the third Monday in January. No appointed member of the commission may  
21 serve more than two consecutive terms.

22          ~~F.~~ E. The executive director of the Arizona board of regents and the  
23 executive director of the state board for private postsecondary education  
24 serve as members of the commission during their respective terms of office  
25 and are not eligible to vote with respect to the commission's review of any  
26 postsecondary institution.

27          ~~G.~~ F. Members appointed pursuant to subsection ~~D-~~ C, paragraphs 1  
28 through 9 of this section are eligible to receive compensation pursuant to  
29 section 38-611 for each day spent in the performance of commission duties and  
30 may be reimbursed for expenses properly incurred in connection with the  
31 attendance at meetings or hearings of the commission.

32          ~~H.~~ G. The governor shall appoint a chairman from among the members of  
33 the commission who shall serve a one year term that begins on the third  
34 Monday in January.

35          ~~I.~~ H. ~~Except as provided in subsection J of this section,~~ A majority  
36 of the members of the commission constitutes a quorum for the transaction of  
37 commission business. The vote of a majority of the quorum constitutes  
38 authority for the commission to act.

39          ~~J.~~ ~~For all purposes relating to title IV, part H, subpart one of the~~  
40 ~~higher education amendments of 1992 the commission membership shall consist~~  
41 ~~only of the members appointed pursuant to subsection D paragraphs 1 through 7~~  
42 ~~of this section, and all commission actions taken pursuant to title IV, part~~  
43 ~~H, subpart one of the higher education act of 1992 require the affirmative~~  
44 ~~vote of at least six members.~~

1       ~~K.~~ I. Members of the commission are immune from personal liability  
2 with respect to all actions that are taken in good faith and within the scope  
3 of the commission's authority.

4       ~~L.~~ J. For the purposes of this section, "community college district"  
5 means a community college district that is established pursuant to sections  
6 15-1402 and 15-1403 and that is a political subdivision of this state.

7       Sec. 2. Section 15-1852, Arizona Revised Statutes, is amended to read:

8       15-1852. Additional powers and duties

9       A. In addition to the powers and duties prescribed in section 15-1851,  
10 the commission for postsecondary education shall:

11       1. Meet at least four times each year.

12       2. Adopt rules to carry out the purposes of this article.

13       3. Administer and enforce ~~the provisions of~~ this article and rules  
14 adopted pursuant to this article.

15       4. Keep a record of its proceedings.

16       5. Contract, on behalf of this state, with the United States secretary  
17 of education for the purpose of complying with the provisions of part H of  
18 the higher education amendments of 1992.

19       ~~6. Enter into agreements and contracts with state regulatory agencies~~  
20 ~~or entities, accrediting bodies and other peer review systems for the purpose~~  
21 ~~of complying with the provisions of title IV program eligibility reviews as~~  
22 ~~set forth in part H of the higher education amendments of 1992. Agreements~~  
23 ~~and contracts executed pursuant to this subsection shall be for the purpose~~  
24 ~~of conducting fact-finding activities, eligibility reviews, compliance~~  
25 ~~assessments and recommendations, program reviews and consumer complaint~~  
26 ~~studies. The review authority of the commission shall be limited to those~~  
27 ~~circumstances specified in section 15-1851, subsection A. The commission~~  
28 ~~shall provide sufficient monies to the agency or contractor to perform review~~  
29 ~~functions.~~

30       ~~7. Establish procedures for the performance of the title IV~~  
31 ~~eligibility reviews as prescribed in part H, subpart one of the higher~~  
32 ~~education amendments of 1992, the evaluation and assessment of the reviews~~  
33 ~~performed, the evaluation and assessment of the postsecondary institution's~~  
34 ~~initial and continuing title IV eligibility, the notification of the results~~  
35 ~~of the reviews and the enforcement of an appeals process that provides for~~  
36 ~~due process for postsecondary education institutions. The review authority~~  
37 ~~of the commission shall be limited to those circumstances specified in~~  
38 ~~section 15-1851, subsection A.~~

39       ~~8. Establish procedures by which agencies of this state that are~~  
40 ~~responsible for oversight of postsecondary institutions receive notification~~  
41 ~~of eligibility reviews, eligibility determinations and actions and other~~  
42 ~~actions taken or planned against postsecondary institutions.~~

43       ~~9.~~ 6. Comply with ~~the provisions of~~ title 38, chapter 3, article 3.1  
44 and title 39.

1 B. The commission may:

2 1. Adopt an official seal.

3 2. Contract.

4 3. Sue and be sued.

5 4. Receive, hold, make and take leases of and sell personal property  
6 for the benefit of the commission.

7 5. Employ permanent or temporary personnel as the commission deems  
8 necessary to carry out this article. The commission may designate the duties  
9 of these personnel. The commission employees are subject to title 41,  
10 chapter 4, articles 5 and 6.

11 6. Conduct investigations, hold hearings and determine methods of  
12 enforcement of ~~the provisions of~~ this article.

13 7. Issue subpoenas to compel the attendance of witnesses and the  
14 production of documents, administer oaths, take testimony, hear proof and  
15 receive exhibits into evidence.

16 8. Establish policy centers under its control to conduct studies.

17 9. Coordinate and promote studies of interest to postsecondary  
18 institutions in this state.

19 C. The commission is exempt from title 41, chapter 6 but shall adopt  
20 rules in a manner substantially similar to title 41, chapter 6.

21 Sec. 3. Section 15-1853, Arizona Revised Statutes, is amended to read:

22 15-1853. Funding; federal monies; postsecondary education fund;  
23 report

24 A. The postsecondary education fund is established consisting of:

25 1. Monies appropriated by the legislature.

26 2. Monies received from state agencies and political subdivisions of  
27 this state.

28 3. Monies received from the United States government, including monies  
29 received from the United States department of education pursuant to  
30 subsection B of this section.

31 4. Gifts, grants and donations received from any private source to  
32 carry out the duties and responsibilities of the commission.

33 B. The commission may receive monies distributed by the United States  
34 department of education for the reimbursement of the costs of performing  
35 review requirements. The costs may include expenses for ~~the instruction of~~  
36 ~~personnel needed to serve the purpose of section 15-1851, subsection A,~~ the  
37 supplementation of existing review functions, work performed by  
38 subcontractors or consultants in connection with the review functions of the  
39 commission and any other administrative expenses necessary for compliance  
40 with part H, subpart one of the higher education amendments of 1992. No more  
41 than thirteen per cent of amounts received by the commission from the United  
42 States department of education may be utilized for administrative purposes by  
43 the commission.

44 C. The commission shall administer the fund in compliance with the  
45 requirements of this article. The commission shall separately account for

1 monies received from each source listed in subsection A of this section and  
2 may establish accounts and subaccounts of the fund as necessary to carry out  
3 the requirements of this subsection.

4 D. Monies obtained pursuant to subsection A, paragraphs 1 through 3 of  
5 this section are subject to legislative appropriation. The commission shall  
6 not use these monies for purposes other than those designated by special line  
7 items for which the monies are received.

8 E. Monies obtained pursuant to subsection A, paragraph 4 of this  
9 section are continuously appropriated. These monies shall be used in  
10 accordance with the requests of the donor. If no request is specified, the  
11 monies may be used for additional responsibilities of the ~~board~~ COMMISSION  
12 prescribed in section 15-1851, subsection ~~C~~ B and section 15-1852,  
13 subsection B, paragraphs 8 and 9.

14 F. The commission shall report quarterly to the joint legislative  
15 budget committee on fund deposits and expenditures.

16 Sec 4. Section 15-1854, Arizona Revised Statutes, is amended to read:

17 15-1854. Private postsecondary education student financial  
18 assistance program; private postsecondary education  
19 student financial assistance fund; definition

20 A. A private postsecondary education student financial assistance  
21 program is established. The commission shall develop, implement and  
22 administer the program. A student who obtains an associate degree from a  
23 community college district or from a community college under the jurisdiction  
24 of an Indian tribe in this state that meets the same accreditation standards  
25 as a community college district and who registers for enrollment as a  
26 full-time student in a baccalaureate program at a private, nationally or  
27 regionally accredited four year degree granting college or university  
28 chartered in this state is eligible to submit an application to the  
29 commission for participation in the program. The commission shall establish  
30 eligibility criteria for the program including financial need and academic  
31 merit, shall develop application forms, procedures and deadlines and shall  
32 select qualifying students each year for participation in the program.  
33 Participating students shall receive an award in an amount of up to two  
34 thousand dollars annually ~~for~~ not to exceed two years ~~and~~ OR four thousand  
35 dollars to be used to pay all or a portion of the tuition and fees charged at  
36 the private, accredited four year college or university.

37 B. A private postsecondary education student financial assistance fund  
38 is established consisting of legislative appropriations. The commission  
39 shall administer the fund. Monies in the fund are exempt from the provisions  
40 of section 35-190 relating to lapsing of appropriations. The commission  
41 shall make awards for payment of tuition at eligible colleges or universities  
42 to students who are selected to participate in the private postsecondary  
43 education student financial assistance program pursuant to subsection A of  
44 this section.

1 C. The commission shall develop a program evaluation procedure in  
2 order to determine the effectiveness of the private postsecondary education  
3 student financial assistance program in shifting students who would have  
4 otherwise attended a public four year college or university to private four  
5 year degree granting colleges or universities.

6 D. A student who fails to receive a baccalaureate degree within a  
7 three year period of receipt of the program award shall reimburse the private  
8 postsecondary education student financial assistance fund for all awards  
9 received pursuant to subsection A of this section. **ON RECEIPT OF SUPPORTING  
10 DOCUMENTATION FROM THE STUDENT, FOR GOOD CAUSE SHOWN THE COMMISSION MAY  
11 PROVIDE FOR EXTENSIONS OF THE THREE YEAR PERIOD TO OBTAIN A BACCALAUREATE  
12 DEGREE.**

13 E. For the purposes of this section, "community college district"  
14 means a community college district that is established pursuant to sections  
15 15-1402 and 15-1403 and that is a political subdivision of this state.

16 Sec. 5. Section 15-1855, Arizona Revised Statutes, is amended to read:  
17 **15-1855. Postsecondary education grant program; fund; program  
18 termination; definition**

19 A. The commission on postsecondary education shall develop, implement  
20 and administer a postsecondary education grant program. The commission shall  
21 develop application forms, procedures and deadlines and shall select eligible  
22 students each year for participation in the postsecondary education grant  
23 program. The commission may establish partnerships with qualifying schools  
24 for the administration of the postsecondary education grant program.  
25 Participating full-time students shall receive a grant in an amount of two  
26 thousand dollars annually for a maximum of four calendar years to be used to  
27 pay all or a portion of the following:

- 28 1. The tuition charged at a qualifying school.
- 29 2. The cost of books required for classes at a qualifying school.
- 30 3. The fees charged at a qualifying school.

31 B. The amount of a grant awarded to a participating part-time student  
32 enrolled ~~in at least six credit hours~~ **AT LEAST HALF-TIME FOR THE ACADEMIC  
33 YEAR AS DEFINED IN 20 UNITED STATES CODE SECTION 1088** shall be prorated in  
34 accordance with the part-time status of the student.

35 C. Employees of private postsecondary institutions and family members  
36 of employees of private postsecondary institutions are not eligible to  
37 receive a postsecondary education grant pursuant to this section if the  
38 employee or family member is eligible for tuition reimbursement or a tuition  
39 waiver as a benefit of employment.

40 D. A student who has a baccalaureate degree from ~~the qualifying school~~  
41 **ANY POSTSECONDARY EDUCATIONAL INSTITUTION** is not eligible to receive  
42 postsecondary education grant monies pursuant to this section.

43 E. Students who provide satisfactory proof to the commission that the  
44 student has met each of the following criteria are eligible to submit an



1 application for consideration by the commission for a grant under the  
2 postsecondary education grant program:

3 ~~1. The student meets at least one of the following criteria:~~  
4 ~~(a) Has graduated from a public or private high school in this state.~~  
5 ~~(b) Has completed the equivalent of grade twelve in a home school~~  
6 ~~program.~~  
7 ~~(c) Has obtained a general equivalency diploma in this state.~~  
8 ~~(d) Is currently a resident of this state and has been a resident of~~  
9 ~~this state for at least the past twelve months.~~  
10 ~~(e) Is a member of the military service of the United States stationed~~  
11 ~~in this state or the spouse or dependent of a member of the military service~~  
12 ~~of the United States stationed in this state.~~

13 1. THE STUDENT EITHER:

14 (a) IS CURRENTLY A RESIDENT OF THIS STATE AND HAS BEEN A RESIDENT OF  
15 THIS STATE FOR AT LEAST THE PAST TWELVE MONTHS.

16 (b) IS A MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES STATIONED  
17 IN THIS STATE OR THE SPOUSE OR DEPENDENT OF A MEMBER OF THE MILITARY SERVICE  
18 OF THE UNITED STATES STATIONED IN THIS STATE.

19 2. The student has met the qualifications adopted by the commission.  
20 The commission shall adopt minimum qualifications that are comparable to the  
21 admissions standards established by the Arizona board of regents for Arizona  
22 public universities.

23 3. The student registers for enrollment as a student in a  
24 baccalaureate program at a nationally or regionally accredited private  
25 postsecondary educational institution in this state that awards four year  
26 baccalaureate degrees.

27 4. The student has provided high school transcripts as proof of  
28 graduation if the student has graduated from a public or private high school.  
29 If high school records no longer exist for a student or after every  
30 reasonable effort has been made to obtain official records, the student may  
31 submit a letter certified by the high school from which the student graduated  
32 or the original high school diploma.

33 5. The student has completed and submitted a free application for  
34 federal student aid.

35 6. The student is a citizen or legal resident of the United States or  
36 is otherwise lawfully present in the United States.

37 7. IF THE STUDENT IS ELIGIBLE TO APPLY FOR MONIES FROM THE PRIVATE  
38 POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE FUND ESTABLISHED BY  
39 SECTION 15-1854, THE STUDENT SHALL APPLY FOR AND RECEIVE MONIES FROM THE  
40 PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE FUND BEFORE THE  
41 STUDENT IS ELIGIBLE TO APPLY FOR A GRANT FROM THE POSTSECONDARY EDUCATION  
42 GRANT FUND ESTABLISHED BY THIS SECTION.

43 F. The postsecondary education grant fund is established consisting of  
44 legislative appropriations. The commission shall administer the fund.  
45 Monies in the fund are continuously appropriated and are exempt from the

1 provisions of section 35-190 relating to lapsing of appropriations. The  
2 commission shall make awards for payment of tuition at qualifying schools to  
3 students who are selected to participate in the postsecondary education grant  
4 program pursuant to subsection A of this section.

5 G. If the amount of monies available for postsecondary education  
6 grants in any fiscal year is insufficient to provide grants to all eligible  
7 applicants, the commission shall award grants to eligible students in the  
8 order in which the applications were received by the commission, except that  
9 priority shall be given to qualifying students who received a grant in the  
10 previous fiscal year and who are still in good academic standing at the same  
11 qualifying school. The commission shall maintain a waiting list for all  
12 other applicants.

13 H. A student who fails to receive a baccalaureate degree within a five  
14 year period of receipt of the program award shall reimburse the postsecondary  
15 education grant fund for all awards received pursuant to subsection A of this  
16 section. **ON RECEIPT OF SUPPORTING DOCUMENTATION FROM THE STUDENT, FOR GOOD  
17 CAUSE SHOWN THE COMMISSION MAY PROVIDE FOR EXTENSIONS OF THE FIVE YEAR PERIOD  
18 TO OBTAIN A BACCALAUREATE DEGREE.**

19 I. The commission shall submit an annual report to the governor, the  
20 president of the senate, the speaker of the house of representatives and the  
21 joint legislative budget committee that includes a detailed description of  
22 the amount of monies distributed under the postsecondary education grant  
23 program during the previous fiscal year and that includes the total number of  
24 qualified applicants for grants, the total number of grants awarded, the  
25 qualifying schools attended by grant recipients and the total number of  
26 qualified applicants who were placed on the waiting list. The commission  
27 shall provide a copy of this report to the secretary of state and the  
28 director of the Arizona state library, archives and public records.

29 J. If the commission is notified by a qualifying school that a student  
30 who has received a postsecondary education grant is no longer in good  
31 academic standing at the qualifying school, the commission shall immediately  
32 discontinue the grant and the student shall reimburse the postsecondary  
33 education grant fund for any unused portion or any unlawfully used portion of  
34 a grant received pursuant to subsection A of this section.

35 K. The commission shall develop a marketing strategy that is designed  
36 to provide information about the postsecondary education grant program to all  
37 high school students in this state.

38 L. The program established by this section ends on July 1, 2016  
39 pursuant to section 41-3102.

40 M. For the purposes of this section, "qualifying school" means a  
41 nationally or regionally accredited private postsecondary educational  
42 institution in this state that offers four year baccalaureate degrees.

43 Sec. 6. Section 15-1871, Arizona Revised Statutes, is amended to read:  
44 **15-1871. Definitions**

45 In this article, unless the context otherwise requires:

1           1. "Account" means an individual trust account in the fund established  
2 as prescribed in this article.

3           2. "Account owner" means the person who enters into a tuition savings  
4 agreement pursuant to this article, who is an account owner within the  
5 meaning of section 529 of the internal revenue code and who is designated at  
6 the time an account is opened as having the right to withdraw monies from the  
7 account before the account is disbursed to or for the benefit of the  
8 designated beneficiary.

9           3. "Commission" means the commission for postsecondary education  
10 established by section 15-1851.

11           4. "Committee" means the family college savings program oversight  
12 committee.

13           5. "Designated beneficiary" means a person who qualifies as a  
14 designated beneficiary under section 529 of the internal revenue code and,  
15 except as provided in section 15-1875, subsections ~~R~~ P and ~~S~~ Q, with  
16 respect to an account, who is designated at the time the account is opened as  
17 the person whose higher education expenses are expected to be paid from the  
18 account or, if this designated beneficiary is replaced in accordance with  
19 section 15-1875, subsections ~~E, F and G~~ D, E AND F, the replacement  
20 beneficiary.

21           6. "Eligible educational institution" means an institution of higher  
22 education that qualifies under section 529 of the internal revenue code as an  
23 eligible educational institution.

24           7. "Financial institution" means any bank, commercial bank, national  
25 bank, savings bank, savings and loan association, credit union, insurance  
26 company, brokerage firm or other similar entity that is authorized to do  
27 business in this state.

28           8. "Fund" means the family college savings program trust fund that  
29 constitutes a public instrumentality of this state AND THAT IS established by  
30 section 15-1873.

31           9. "Member of the family" means any of the following:

32           (a) A son or daughter of a person or a descendant of the son or  
33 daughter of the person.

34           (b) A stepson or stepdaughter of a person.

35           (c) A brother, sister, stepbrother or stepsister of a person. For the  
36 purposes of this subdivision, "brother" and "sister" includes a brother or  
37 sister by the half-blood.

38           (d) The father or mother of a person or the ancestor of the father or  
39 mother of a person.

40           (e) A stepfather or stepmother of a person.

41           (f) A son or daughter of a person's brother or sister. For the  
42 purposes of this subdivision, "brother" and "sister" includes a brother or  
43 sister by the half-blood.

1 (g) A brother or sister of the person's father or mother. For the  
2 purposes of this subdivision, "brother" and "sister" includes a brother or  
3 sister by the half-blood.

4 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law,  
5 brother-in-law or sister-in-law of a person.

6 (i) The spouse of a person or the spouse of any individual described  
7 in this paragraph.

8 (j) A first cousin of a person.

9 (k) Any individual who meets the criteria for family membership  
10 described in this paragraph as a result of legal adoption.

11 10. "Nonqualified withdrawal" means a withdrawal from an account other  
12 than one of the following:

13 (a) A qualified withdrawal.

14 (b) A withdrawal made as the result of the death or disability of the  
15 designated beneficiary of an account.

16 (c) A withdrawal that is made on the account of a scholarship, or the  
17 allowance or payment described in section 135(d)(1)(B) or (C) of the internal  
18 revenue code, and that is received by the designated beneficiary, but only to  
19 the extent of the amount of this scholarship, allowance or payment.

20 (d) A rollover or change of designated beneficiary.

21 11. "Person" means an individual, an individual's legal representative  
22 or any other legal entity authorized to establish a savings account under  
23 section 529 of the internal revenue code and the corresponding regulations.

24 12. "Program" means the family college savings program **THAT IS**  
25 established under this article **AND** that constitutes a qualified tuition  
26 program as defined in section 529 of the internal revenue code.

27 13. "Qualified higher education expenses" means tuition, fees, books,  
28 supplies, room and board and equipment required for enrollment or attendance  
29 of a designated beneficiary at an eligible educational institution and  
30 expenses for special needs services in the case of a special needs  
31 beneficiary that are incurred in connection with enrollment or attendance, if  
32 these expenses meet the definition of qualified higher education expenses in  
33 section 529 of the internal revenue code.

34 14. "Qualified withdrawal" means a withdrawal from an account to pay  
35 the qualified higher education expenses of the designated beneficiary of the  
36 account, but only if the withdrawal is made in accordance with this article.

37 15. "Section 529 of the internal revenue code" means section 529 of the  
38 internal revenue code of 1986, as amended, and the final regulations issued  
39 pursuant to that section.

40 16. "Trust interest" means an account owner's interest in the fund  
41 created by a tuition savings agreement for the benefit of a designated  
42 beneficiary.

43 17. "Tuition savings agreement" means an agreement between the  
44 commission, as trustee of the fund, and an account owner that creates an  
45 interest in the fund and that provides for participation in the program.

1       Sec. 7. Section 15-1874, Arizona Revised Statutes, is amended to read:  
2       15-1874. Use of contractor as account depository and manager

3       A. The commission shall implement the operation of the program through  
4       the use of one or more financial institutions to act as the depositories of  
5       the fund and managers of the program. Under the program, persons may submit  
6       applications for enrollment in the program and establish accounts in the fund  
7       at the financial institution. Monies paid by account owners to the fund for  
8       deposit in accounts maintained by the fund at a financial institution shall  
9       be paid to the financial institution as an agent of the fund and the tuition  
10      savings agreements shall provide that all monies paid by account owners to  
11      fund accounts held at financial institutions are being paid to the fund.

12      B. The committee shall solicit proposals from financial institutions  
13      to act as the depositories of fund monies and managers of the program.  
14      Financial institutions that submit proposals must describe the financial  
15      instruments that will be held in accounts. The commission shall select  
16      proposals from financial institutions to act as depositories and managers,  
17      and ~~that~~ the solicitation and selection process is exempt from the  
18      procurement code requirements of title 41, chapter 23.

19      C. On the recommendation of the committee, the commission shall select  
20      the financial institution or institutions to implement ~~the operation of~~ the  
21      program from among bidding financial institutions that demonstrate the most  
22      advantageous combination, both to potential program participants and this  
23      state, of the following factors:

24          1. Financial stability and integrity.

25          2. The safety of the investment instruments being offered, taking into  
26      account any insurance provided with respect to these instruments.

27          3. The ability of the investment instruments to track estimated costs  
28      of higher education as calculated by the commission and provided by the  
29      financial institution to the account holder.

30          4. The ability of the financial institutions, directly or through a  
31      subcontract, to satisfy record keeping and reporting requirements.

32          5. The financial institution's plan for promoting the program and the  
33      investment it is willing to make to promote the program.

34          6. The fees, if any, proposed to be charged to persons for maintaining  
35      accounts.

36          7. The minimum initial deposit and minimum contributions that the  
37      financial institution will require for the investment of fund monies and the  
38      willingness of the financial institution to accept contributions through  
39      payroll deduction plans and other deposit plans.

40          8. Any other benefits to this state or its residents included in the  
41      proposal, including an account opening fee payable to the commission by the  
42      account owner and an additional fee from the financial institution for  
43      statewide program marketing by the commission.

44      D. The commission shall enter into a contract with a financial  
45      institution, or except as provided in subsection E of this section, contracts

1 with financial institutions, to serve as program managers and depositories.  
2 Program management contracts shall provide the terms and conditions by which  
3 financial institutions shall sell interests in the fund to account owners,  
4 invest monies in the fund and manage the program.

5 E. The commission may select more than one financial institution and  
6 investment for the program if both of the following conditions exist:

7 1. The United States internal revenue service has provided guidance  
8 that giving a contributor a choice of two investment instruments under a  
9 state plan will not cause the plan to fail to qualify for favorable tax  
10 treatment under section 529 of the internal revenue code.

11 2. The commission concludes that the choice of instrument vehicles is  
12 in the best interest of college savers and will not interfere with the  
13 promotion of the program.

14 F. A program manager shall:

15 1. Take all action required to keep the program in compliance with the  
16 requirements of this article and all action not contrary to this article or  
17 its contract to manage the program so that it is treated as a qualified  
18 tuition plan under section 529 of the internal revenue code.

19 2. Keep adequate records of each of the fund's accounts, keep each  
20 account segregated from each other account and provide the commission with  
21 the information necessary to prepare statements required by section 15-1875,  
22 subsections ~~0, P and Q~~ M, N AND O or file these statements on behalf of the  
23 commission.

24 3. Compile and total information contained in statements required to  
25 be prepared under section 15-1875, subsections ~~0, P and Q~~ M, N AND O and  
26 provide these compilations to the commission.

27 4. If there is more than one program manager, provide the commission  
28 with this information to assist the commission to determine compliance with  
29 section 15-1875, subsection ~~N~~ L.

30 5. Provide representatives of the commission, including other  
31 contractors or other state agencies, access to the books and records of the  
32 program manager to the extent needed to determine compliance with the  
33 contract.

34 6. Hold all accounts in the name of and for the benefit of the fund  
35 and this state.

36 G. Any contract executed between the commission and a financial  
37 institution pursuant to this section shall be for a term of at least three  
38 years and not more than seven years.

39 H. The commission may terminate a contract with a financial  
40 institution at any time for good cause on the recommendation of the  
41 committee. If a contract is terminated pursuant to this subsection, the  
42 commission shall take custody of accounts held at that financial institution  
43 and shall seek to promptly transfer the accounts to another financial  
44 institution that is selected as a program manager and into investment  
45 instruments as similar to the original investments as possible.

1 I. If the commission determines not to renew the appointment of a  
2 financial institution as a program manager, the commission may take action  
3 consistent with the interests of the program and the accounts and in  
4 accordance with its duties as the trustee of the fund, including termination  
5 of all services or continuation of certain management and administrative  
6 services of that financial institution for accounts of the program managed by  
7 that financial institution during its term as a program manager, if any  
8 continuation of services is only permitted under the following conditions:

9 1. The commission and the financial institution ~~enters~~ ENTER into a  
10 written agreement specifying the rights of the program and the commission and  
11 the responsibilities of the financial institution, including the standards  
12 that continue to be applicable to the accounts as accounts of the program.

13 2. Any services provided by the financial institution to accounts  
14 continue to be subject to the control of the commission as the trustee of the  
15 fund with responsibility of all accounts of the program.

16 Sec. 8. Section 15-1875, Arizona Revised Statutes, is amended to read:  
17 15-1875. Program requirements

18 A. The program shall be operated through the use of accounts in the  
19 fund established by account owners. Payments to the fund for participation  
20 in the program shall be made by account owners pursuant to tuition savings  
21 agreements. An account may be opened by any person who desires to invest in  
22 the fund and to save to pay qualified higher education expenses by satisfying  
23 each of the following requirements:

24 1. Completing an application in the form prescribed by the  
25 commission. The application shall include the following information:

26 (a) The name, address and social security number or employer  
27 identification number of the contributor.

28 (b) The name, address and social security number of the account owner  
29 if the account owner is not the contributor.

30 (c) The name, address and social security number of the designated  
31 beneficiary.

32 (d) The certification relating to no excess contributions required by  
33 subsection ~~N~~ L.

34 (e) Any other information that the commission may require.

35 2. Paying the one-time application fee established by the commission.

36 3. Making the minimum contribution required by the commission or by  
37 opening an account.

38 4. Designating the type of account to be opened if more than one type  
39 of account is offered.

40 B. Any person may make contributions to an account after the account  
41 is opened.

42 C. Contributions to accounts may be made only in cash.

43 ~~D. Account owners may withdraw all or part of the balance from an~~  
44 ~~account on sixty days' notice, or a shorter period as may be authorized by~~  
45 ~~the commission, under rules prescribed by the commission. These rules shall~~

~~include provisions that will generally enable the commission or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may, but need not, require one or more of the following:~~

~~1. Account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses or other supporting material.~~

~~2. Qualified withdrawals from an account shall be made only by a check payable as designated by the account owner.~~

~~3. Withdrawals not meeting certain requirements shall be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner must seek refunds of penalties, if any, directly from the commission.~~

~~E.~~ D. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the commission.

~~F.~~ E. On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

~~G.~~ F. Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following:

1. Subsection ~~N~~ L, relating to excess contributions.

2. Subsection ~~K~~ I, relating to investment choice.

~~H. In the case of any nonqualified withdrawal from an account, a penalty may be imposed if the penalty is required for purposes of qualifying the program as a qualified tuition program under section 529 of the internal revenue code. The commission may adopt rules to establish the parameters for the assessment of penalties. Any penalties assessed shall be paid to the commission for use in operating and marketing the program and for student financial aid.~~

~~I.~~ G. Each account shall be maintained separately from each other account under the program.

~~J.~~ H. Separate records and accounting shall be maintained for each account for each designated beneficiary.

~~K.~~ I. No contributor to, account owner of or designated beneficiary of any account may direct the investment, within the meaning of section 529 of the internal revenue code, of any contributions to an account or the earnings from the account.

~~L.~~ J. If the commission terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the commission shall select the



1 financial institution and type of investment to which the balance of the  
2 account is moved unless the internal revenue service provides guidance  
3 stating that allowing the account owner to select among several financial  
4 institutions that are then contractors would not cause a plan to cease to be  
5 a qualified tuition plan.

6 ~~M.~~ K. Neither an account owner nor a designated beneficiary may use  
7 an interest in an account as security for a loan. Any pledge of an interest  
8 in an account is of no force and effect.

9 ~~N.~~ L. On the recommendation of the committee, the commission shall  
10 adopt rules to prevent contributions on behalf of a designated beneficiary in  
11 excess of those necessary to pay the qualified higher education expenses of  
12 the designated beneficiaries. The rules shall address the following:

13 1. Procedures for aggregating the total balances of multiple accounts  
14 established for a designated beneficiary.

15 2. The establishment of a maximum total balance for the purpose of  
16 prohibiting contributions to accounts established for a designated  
17 beneficiary if the contributions would cause the maximum total balance to be  
18 exceeded.

19 3. The commission shall review the quarterly reports received from  
20 participating financial institutions and certify that the balance in all  
21 qualified tuition programs, as defined in section 529 of the internal revenue  
22 code, of which that person is the designated beneficiary does not exceed the  
23 lesser of:

24 (a) A maximum college savings amount established by the commission  
25 from time to time.

26 (b) The cost in current dollars of qualified higher education expenses  
27 that the contributor reasonably anticipates the designated beneficiary will  
28 incur.

29 4. Requirements that any excess contributions with respect to a  
30 designated beneficiary be promptly withdrawn in a nonqualified withdrawal or  
31 rolled over to another account in accordance with this section.

32 ~~O.~~ M. If there is any distribution from an account to any person or  
33 for the benefit of any person during a calendar year, the distribution shall  
34 be reported to the internal revenue service and the account owner or the  
35 designated beneficiary to the extent required by federal law.

36 ~~P.~~ N. The financial institution shall provide statements to each  
37 account owner at least once each year within thirty-one days after the twelve  
38 month period to which they relate. The statement shall identify the  
39 contributions made during a preceding twelve month period, the total  
40 contributions made through the end of the period, the value of the account as  
41 of the end of this period, distributions made during this period and any  
42 other matters that the commission requires be reported to the account owner.

43 ~~Q.~~ O. Statements and information returns relating to accounts shall  
44 be prepared and filed to the extent required by federal or state tax law.

~~R.~~ P. A state or local government or organizations described in section 501(c)(3) of the internal revenue code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

~~S.~~ Q. In the case of any account described in subsection ~~R~~ P, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

~~F.~~ R. Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the commission are confidential, are not public records and shall not be released by the commission.

~~4.~~ S. An account owner may transfer ownership rights to another eligible account owner.

~~V.~~ T. An account owner may designate successor account owners.

Sec. 9. Repeat

Section 41-3008.14, Arizona Revised Statutes, is repealed.

Sec. 10. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3018.14, to read:

41-3018.14. Commission for postsecondary education; termination  
July 1, 2018

A. THE COMMISSION FOR POSTSECONDARY EDUCATION TERMINATES ON JULY 1, 2018.

B. TITLE 15, CHAPTER 14, ARTICLE 5 IS REPEALED ON JANUARY 1, 2019.

Sec. 11. Purpose

Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the commission for postsecondary education to:

1. Conduct, supervise and coordinate the review of public and private postsecondary education institutions in this state to determine their eligibility for student financial aid monies.

2. Administer specifically identified federal and state financial aid programs.

3. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest.

4. Coordinate and promote studies of interest to postsecondary institutions.

5. Provide information to the public on postsecondary education opportunities in this state.

## Sec. 12. Retroactivity

Sections 9 and 10 of this act are effective retroactively to July 1, 2008.