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**MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN**  
**2006 (SECOND) REGULAR SESSION**

Bill No. 376 (EC)

Introduced by:

L. F. Kasperbauer *LK*

E. J. B. Calvo *EC*

**AN ACT TO ADD A NEW CHAPTER 50 TO 17 GCA, RELATIVE TO  
ESTABLISHING A TAX DEFERRED SAVINGS PROGRAM THAT  
ALLOWS GUAM RESIDENTS TO SAVE FOR COLLEGE USING THE  
PROGRAM AUTHORIZED BY SECTION 529 OF THE INTERNAL  
REVENUE CODE**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

1        **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds and declares  
2 all of the following:

3        (a) The general welfare and well-being of the people of Guam are directly related to the  
4 educational levels and skills of its residents. Therefore, a vital and valid public purpose is  
5 served by the creation and implementation of programs that encourage and make possible the  
6 attainment of higher education by the greatest number of Guam residents.

7        (b) *I Liheslaturan Guåhan* finds, declares, and recognizes that the general welfare of the  
8 residents and Guam will be enhanced by the creation of a program pursuant to which residents  
9 and others may invest money in a public trust for future application to the payment of higher  
10 education expenses and that the creation of a means of encouragement of residents in the  
11 investment of funds for future higher education application represents the carrying out of a  
12 valid and vital public purpose.

13        (c) In order to make available to the residents of Guam an opportunity to fund future  
14 higher education needs for beneficiaries with certain public assistance, and to ensure that Guam  
15 takes advantage of recent changes in tax law that will benefit its residents, it is necessary that a

public trust be established in which Guam residents and others may invest moneys for future educational use.

(d) A program that encourages nonprofit organizations to accumulate funds for the awarding of scholarships for recipients to be designated in the future will benefit even the lowest income families and students on Guam, who otherwise are unable to save sufficient amounts to pay for the expense of higher education.

(f) It is the intent of *I Liheslaturan Guåhan* to create the Guam College Savings Program as a self-sustaining trust, paying all costs of administration out of earnings on moneys on deposit therein. The implementation and effectuation of the Guam College Savings Program constitutes the carrying out of a valid and vital public purpose.

**Section 2. Establishment of Fund.** A new Chapter 50, commencing with section 50001, is added to Title 17 of the Guam Code Annotated, to read as follows:

#### **Chapter 50. Guam College Savings Program**

**§50001. Definitions.** As used in this chapter, unless the context otherwise requires:

"Account" or "college account" means an individual savings account established in accordance with this chapter.

"Account owner" means the individual who enters into a tuition savings agreement pursuant to this chapter and as defined under the proposed income tax regulations, sections 1.529-1 to 1.529-6 or the final regulations relating to section 529 of the Internal Revenue Code of 1986, as amended, whichever is applicable, including any amendments or supplements thereto.

"Commissioner" means the Commissioner of Banking and Insurance appointed under Title 11, Section 103102 of the Guam Code.

"Designated beneficiary" means a designated beneficiary as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

"Eligible educational institution" means an institution defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

"Financial organization" means an organization authorized to do business in the Territory of Guam that is:

- (1) Certified as an insurer by the commissioner;
- (2) Licensed or chartered as a financial institution by the commissioner;
- (3) Chartered by an agency of the federal government;
- (4) Subject to the jurisdiction and regulation of the securities and exchange commission of the federal government; or
- (5) Any other entity otherwise authorized to act in this Territory as a trustee pursuant to the provisions of the Employee Retirement Income Security Act of 1974, as may be amended from time to time, or pursuant to the provisions of the Guam Trust Company Act, 11 GCA § 160101 et seq.

"Management contract" means the contract executed by the commissioner and a financial organization selected to act as a depository and manager of the program.

"Member of the family" means a family member as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

"Nonqualified withdrawal" means a withdrawal from an account that is not:

- (1) Used for qualified higher education expenses of the designated beneficiary;
- (2) Made on account of the death or disability of the designated beneficiary; or
- (3) Made on the account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code of 1986, as amended) received by the designated beneficiary, to the extent the withdrawal does not exceed the amount of the scholarship, allowance, or payment.

"Program" means the college savings program.

"Program manager" means a financial organization selected by the commissioner to act as a depository and manager of the program.

"Qualified higher education expenses" means any qualified higher education expense defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

1 "Qualified withdrawal" means withdrawal from an account to pay the qualified higher  
2 education expenses of the designated beneficiary of the account.

3 "Tuition savings agreement" means an agreement between the commissioner or a  
4 financial organization and the account owner.

5 **§50002. Guam College Savings Program established.** There is established the Guam  
6 College Savings Program. The purpose of this program is to enable families to save for college  
7 tuition and other expenses through college accounts. The program shall provide college  
8 accounts to:

9 (1) Enable residents of Guam and other territories and states to benefit from the tax  
10 incentive provided for qualified state tuition programs under the Internal Revenue Code of  
11 1986, as amended.

12 **§50003. Functions and powers of the commissioner.** (a) The commissioner shall implement  
13 the program under the terms and conditions established by this Chapter. The commissioner  
14 may make changes to the program as required for participants to obtain or maintain the federal  
15 tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as  
16 amended, or successor legislation.

17 (b) The commissioner shall be tasked with implementing the program through the use of  
18 financial organizations as account depositories and managers. Under the program, individuals  
19 may establish accounts directly with an account depository.

20 (c) The commissioner shall be tasked with soliciting proposals from financial  
21 organizations to act as program managers and trustees. Financial organizations submitting  
22 proposals shall describe the investment instruments that will be held in accounts. The  
23 commissioner shall select a program manager based on the following factors:

- 24 (1) The financial stability and integrity of the financial organization;  
25 (2) The safety of the investment instruments being offered;  
26 (3) The ability of the investment instruments to track the expected increasing costs of  
27 higher education;

(4) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(5) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;

(6) The fees, if any, proposed to be charged to persons for opening accounts;

(7) The minimum initial deposit and minimum contributions that the financial organization will require;

(8) The ability of financial organizations to accept electronic withdrawals, including payroll deduction plans; and

(9) Other benefits to the Territory or its residents included in the proposal.

(d) The commissioner may enter into a management contract of up to ten years with a financial organization. The management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of section 50004 and to manage the program to qualify it as a qualified state tuition plan under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;

(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the commissioner with the information necessary to prepare the statements required by section 50004;

(3) Compile information contained in statements required to be prepared under section 50004 and provide the compilations to the commissioner;

(4) If there is more than one program manager, provide the commissioner with the information necessary to determine compliance with section 50004;

(5) Provide the commissioner or designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;

(6) Hold all accounts for the benefit of the account owner;

(7) Be audited at least annually by a firm of independent certified public accountants selected by the program manager, and provide the results of the audit to the commissioner;

(8) Provide the commissioner with copies of all regulatory filings and reports related to the program made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the commissioner, the results of any periodic examination of the manager by any local or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the commission; and

(9) Undertake to provide the information required by rule 15c2-12(b)(5) under the Securities Exchange Act of 1934 pursuant to a continuing disclosure certificate for the benefit of the account owners.

(e) The commissioner may select more than one financial organization and investment instrument for the program.

(f) The commissioner may require an audit to be conducted of the operations and financial position of the program manager at any time if the commissioner has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program manager.

(g) During the term of any contract with a program manager, the commissioner shall conduct an examination of the manager and its handling of accounts. The examination shall be conducted at least biennially if the manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

(h) The commissioner may adopt rules necessary to implement the program.

**§50004. Program requirements; college account.** (a) A college account may be opened by any person who desires to save money for the payment of the qualified higher education expenses on behalf of a designated beneficiary. The person shall be considered the account owner as defined in section 50001. An application for an account shall be in the form prescribed by the program and shall contain the following:

(1) The name, address, and social security number or employer identification number of the account owner;

(2) The designation of a beneficiary;

(3) The name, address, and social security number of the designated beneficiary;

(4) A certification relating to no excess contributions; and

(5) Other information as the program may require.

(b) Only the account owner may make contributions to the account after the account is opened.

(c) Contributions to accounts may be made only in cash.

(d) An account owner may withdraw all or part of the balance from an account on sixty (60) days' notice or a shorter period as may be authorized under rules governing the program. The rules shall include provisions to generally enable the determination of whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require one or more of the following:

(1) An account owner seeking to make a qualified withdrawal shall provide certifications of qualified higher education expenses and other information required to comply with section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;

(2) Withdrawals not meeting the requirements of this section shall be treated as nonqualified withdrawals by the program manager, and if the withdrawals are subsequently deemed qualified withdrawals within a reasonable time period as specified by the commissioner, the account owner shall seek any refund of penalties directly from the program.

(e) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary. An account owner may transfer all or a portion of an account to another college account, the designated beneficiary of which is a member of the same family, as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, as the beneficiary of the initial account. Changes in designated beneficiaries and transfers under this section shall not be permitted if they constitute excess contributions.

(f) In the case of any nonqualified withdrawal from an account, an amount equal to ten per cent (or that rate imposed under final regulations adopted by the Internal Revenue Service) of the portion of the withdrawal constituting income as determined in accordance with the principles of section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, shall be collected as a penalty and paid to the college savings program trust fund, as provided under section 529 of the Internal Revenue Code of 1986, as amended, successor legislation, or any guidance issued by the Internal Revenue Service.

(g) The percentage of the penalty described in subsection (f) may be increased if the commissioner determines that the amount of the penalty must be increased to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified tuition program under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(h) The percentage of the penalty described in subsection (f) may be decreased by rule if it is determined the penalty is greater than the amount required to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified tuition program under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(i) The program shall provide separate accounting for each designated beneficiary.

(j) No account owner or designated beneficiary of any account shall be permitted to direct the investment of any contributions to an account or the earnings on it.

(k) Neither an account owner nor a designated beneficiary shall use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(l) Contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary shall not be allowed. The prohibition on excess contributions shall conform to section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(m) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported to the Department of



Revenue and Taxation and the account owner, the designated beneficiary, or the distributee, to the extent required by federal law or regulation.

Statements shall be provided to each account owner at least once each year within sixty (60) days after the end of the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the commissioner requires to be reported to the account owner.

Statements and information relating to accounts shall be prepared and filed to the extent required by federal and local tax law.

(n) A local government or organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or successor legislation, may open and become the account owner of an account to fund scholarships for persons whose identity shall be determined upon disbursement. Any account opened pursuant to this subsection is not required to comply with the condition set forth in subsection (a) that a beneficiary be designated when an account is opened, and each individual who receives an interest in the account as a scholarship shall be treated as a designated beneficiary.

(o) An annual fee may be imposed upon the account owner for the maintenance of the account.

(p) A minimum length of time as determined by the commissioner may be required of the account before distributions for qualified higher education can be made.

(q) The program shall disclose in writing the following information to each account owner and prospective account owner of a college account:

- (1) The terms and conditions for purchasing a college account;
- (2) Any restrictions on the substitution of beneficiaries;
- (3) The person or entity entitled to terminate the tuition savings agreement;
- (4) The period of time during which a beneficiary may receive benefits under the tuition savings agreement;

(5) The terms and conditions under which money may be wholly or partially withdrawn from the program, including any reasonable charges and fees that may be imposed for withdrawal; and

(6) The probable tax consequences associated with contributions to and distributions from accounts.

**§50005. Program limitations; college account.** (a) Nothing in this chapter shall be construed to:

(1) Give any designated beneficiary any rights or legal interest with respect to an account;

(2) Guarantee that a designated beneficiary:

(A) Will be admitted to an institution of higher education; or

(B) Upon admission to an institution of higher education, will be permitted to continue to attend or will receive a degree from the institution;

(3) Create residency for an individual merely because the individual is a designated beneficiary; or

(4) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(b) Nothing in this chapter shall create or be construed to create any obligation of the commissioner, Territory of Guam, Government of Guam, program manager or any agency or instrumentality of Guam to guarantee for the benefit of any account owner or designated beneficiary with respect to:

(1) The rate of interest or other return on any account;

(2) The payment of interest or other return on any account; or

(3) The repayment of the principal of any account.

The commissioner shall provide by rule that every tuition savings agreement, contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by Guam and neither the principal deposited nor the investment return is guaranteed by Guam.

1       **§50006. College savings program trust fund.** (a) There is established the college  
2 savings program trust fund. The program manager shall have custody of the fund. All payments  
3 from the fund shall be made in accordance with this chapter.

4       (b) The fund shall consist of a trust account and an operating account. The trust account  
5 shall include amounts received by the college savings program pursuant to tuition savings  
6 agreements, administrative charges, fees, and all other amounts received by the program from  
7 other sources, and interest and investment income earned by the fund. The program manager,  
8 from time to time, shall make transfers from the trust account to the operating account for the  
9 immediate payment of obligations under tuition savings agreements, operating expenses, and  
10 administrative costs of the college savings program.

11       (c) The program manager, as trustee, shall invest the assets of the fund in securities that  
12 constitute legal investments under local laws relating to the investment of trust fund assets by  
13 trust companies. Trust fund assets shall be kept separate and shall not be commingled with  
14 other assets, except as provided in this chapter. The program manager may enter into contracts  
15 to provide for investment advice and management, custodial services, and other professional  
16 services for the administration and investment of the program.

17       (d) The program manager shall provide for the administration of the fund, including  
18 maintaining participant records and accounts, and providing annual audited reports. The  
19 commissioner may enter into contracts for administrative services, including reports.

20       (e) All administrative fees, costs, and expenses, including investment fees and expenses,  
21 shall be paid from the operating account of the fund and, notwithstanding any other law to the  
22 contrary, may be made without appropriation or allotment.

23       **§§50007. Tax reporting.** The program manager of the college savings program, or a  
24 designee, shall file a report annually, with the Department of Revenue and Taxation, setting  
25 forth the names and identification numbers of account owners, designated beneficiaries, and  
26 distributees of college accounts, the amounts contributed to the accounts, the amounts  
27 distributed from the accounts, and the nature of the distributions as qualified withdrawals or as  
28 withdrawals other than qualified withdrawals, and any other information that the Department

1 of Revenue and Taxation may require regarding the taxation under this chapter of amounts  
2 contributed to or withdrawn from the accounts.

3 **Section 3.** Section 103102(d) of Title 11 of the Guam Code Annotated is hereby  
4 amended to read as follows:

5 (d) The Commissioner shall perform all duties imposed upon him by the provisions of  
6 this Title, Chapter 50 of Article 17, and other laws regulating banking and insurance in Guam  
7 and shall enforce all such provisions and laws.