



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB0497

Introduced 2/8/2007, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.5

735 ILCS 5/12-1001

from Ch. 110, par. 12-1001

Amends the State Treasurer Act to provide that moneys held in an account invested in the Illinois College Savings Pool shall be exempt from all claims of the creditors of the participant, donor, or designated beneficiary of that account, except for non-exempt College Savings Pool transfers to or from the account. Defines "participant" and "donor". Amends the Code of Civil Procedure. Provides that moneys held in an account invested in the Illinois College Savings Pool of which the debtor is a participant or donor is personal property that is exempt from judgment, attachment, or distress from rent except for: (i) contributions to the account made with the intent to hinder, delay, or defraud any creditor, (ii) certain contributions to the account made during the 365 day period prior to the date of the debtor filing for bankruptcy in excess of the annual gift tax exclusion; or (iii) certain contributions to the account made during the the 730 to 366 day period prior to the date of the debtor filing for bankruptcy in excess of the annual gift tax exclusion.

LRB095 03624 CMK 23646 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The State Treasurer Act is amended by changing  
5 Section 16.5 as follows:

6 (15 ILCS 505/16.5)

7 Sec. 16.5. College Savings Pool. The State Treasurer may  
8 establish and administer a College Savings Pool to supplement  
9 and enhance the investment opportunities otherwise available  
10 to persons seeking to finance the costs of higher education.  
11 The State Treasurer, in administering the College Savings Pool,  
12 may receive moneys paid into the pool by a participant and may  
13 serve as the fiscal agent of that participant for the purpose  
14 of holding and investing those moneys.

15 "Participant", as used in this Section, means any person  
16 who has authority to withdraw funds, change the designated  
17 beneficiary, or otherwise exercise control over an account.

18 "Donor", as used in this Section, means any person who makes  
19 investments in the pool. "Designated beneficiary", as used in  
20 this Section, means any person on whose behalf an account is  
21 established in the College Savings Pool by a participant. Both  
22 in-state and out-of-state persons may be participants, donors,  
23 and designated beneficiaries in the College Savings Pool.

1           New accounts in the College Savings Pool shall be processed  
2 through participating financial institutions. "Participating  
3 financial institution", as used in this Section, means any  
4 financial institution insured by the Federal Deposit Insurance  
5 Corporation and lawfully doing business in the State of  
6 Illinois and any credit union approved by the State Treasurer  
7 and lawfully doing business in the State of Illinois that  
8 agrees to process new accounts in the College Savings Pool.  
9 Participating financial institutions may charge a processing  
10 fee to participants to open an account in the pool that shall  
11 not exceed \$30 until the year 2001. Beginning in 2001 and every  
12 year thereafter, the maximum fee limit shall be adjusted by the  
13 Treasurer based on the Consumer Price Index for the North  
14 Central Region as published by the United States Department of  
15 Labor, Bureau of Labor Statistics for the immediately preceding  
16 calendar year. Every contribution received by a financial  
17 institution for investment in the College Savings Pool shall be  
18 transferred from the financial institution to a location  
19 selected by the State Treasurer within one business day  
20 following the day that the funds must be made available in  
21 accordance with federal law. All communications from the State  
22 Treasurer to participants and donors shall reference the  
23 participating financial institution at which the account was  
24 processed.

25           The Treasurer may invest the moneys in the College Savings  
26 Pool in the same manner, in the same types of investments, and

1 subject to the same limitations provided for the investment of  
2 moneys by the Illinois State Board of Investment. To enhance  
3 the safety and liquidity of the College Savings Pool, to ensure  
4 the diversification of the investment portfolio of the pool,  
5 and in an effort to keep investment dollars in the State of  
6 Illinois, the State Treasurer shall make a percentage of each  
7 account available for investment in participating financial  
8 institutions doing business in the State. The State Treasurer  
9 shall deposit with the participating financial institution at  
10 which the account was processed the following percentage of  
11 each account at a prevailing rate offered by the institution,  
12 provided that the deposit is federally insured or fully  
13 collateralized and the institution accepts the deposit: 10% of  
14 the total amount of each account for which the current age of  
15 the beneficiary is less than 7 years of age, 20% of the total  
16 amount of each account for which the beneficiary is at least 7  
17 years of age and less than 12 years of age, and 50% of the total  
18 amount of each account for which the current age of the  
19 beneficiary is at least 12 years of age. The State Treasurer  
20 shall adjust each account at least annually to ensure  
21 compliance with this Section. The Treasurer shall develop,  
22 publish, and implement an investment policy covering the  
23 investment of the moneys in the College Savings Pool. The  
24 policy shall be published (i) at least once each year in at  
25 least one newspaper of general circulation in both Springfield  
26 and Chicago and (ii) each year as part of the audit of the

1 College Savings Pool by the Auditor General, which shall be  
2 distributed to all participants. The Treasurer shall notify all  
3 participants in writing, and the Treasurer shall publish in a  
4 newspaper of general circulation in both Chicago and  
5 Springfield, any changes to the previously published  
6 investment policy at least 30 calendar days before implementing  
7 the policy. Any investment policy adopted by the Treasurer  
8 shall be reviewed and updated if necessary within 90 days  
9 following the date that the State Treasurer takes office.

10 Participants shall be required to use moneys distributed  
11 from the College Savings Pool for qualified expenses at  
12 eligible educational institutions. "Qualified expenses", as  
13 used in this Section, means the following: (i) tuition, fees,  
14 and the costs of books, supplies, and equipment required for  
15 enrollment or attendance at an eligible educational  
16 institution and (ii) certain room and board expenses incurred  
17 while attending an eligible educational institution at least  
18 half-time. "Eligible educational institutions", as used in  
19 this Section, means public and private colleges, junior  
20 colleges, graduate schools, and certain vocational  
21 institutions that are described in Section 481 of the Higher  
22 Education Act of 1965 (20 U.S.C. 1088) and that are eligible to  
23 participate in Department of Education student aid programs. A  
24 student shall be considered to be enrolled at least half-time  
25 if the student is enrolled for at least half the full-time  
26 academic work load for the course of study the student is

1 pursuing as determined under the standards of the institution  
2 at which the student is enrolled. Distributions made from the  
3 pool for qualified expenses shall be made directly to the  
4 eligible educational institution, directly to a vendor, or in  
5 the form of a check payable to both the beneficiary and the  
6 institution or vendor. Any moneys that are distributed in any  
7 other manner or that are used for expenses other than qualified  
8 expenses at an eligible educational institution shall be  
9 subject to a penalty of 10% of the earnings unless the  
10 beneficiary dies, becomes disabled, or receives a scholarship  
11 that equals or exceeds the distribution. Penalties shall be  
12 withheld at the time the distribution is made.

13 The Treasurer shall limit the contributions that may be  
14 made on behalf of a designated beneficiary based on an  
15 actuarial estimate of what is required to pay tuition, fees,  
16 and room and board for 5 undergraduate years at the highest  
17 cost eligible educational institution. The contributions made  
18 on behalf of a beneficiary who is also a beneficiary under the  
19 Illinois Prepaid Tuition Program shall be further restricted to  
20 ensure that the contributions in both programs combined do not  
21 exceed the limit established for the College Savings Pool. The  
22 Treasurer shall provide the Illinois Student Assistance  
23 Commission each year at a time designated by the Commission, an  
24 electronic report of all participant accounts in the  
25 Treasurer's College Savings Pool, listing total contributions  
26 and disbursements from each individual account during the

1 previous calendar year. As soon thereafter as is possible  
2 following receipt of the Treasurer's report, the Illinois  
3 Student Assistance Commission shall, in turn, provide the  
4 Treasurer with an electronic report listing those College  
5 Savings Pool participants who also participate in the State's  
6 prepaid tuition program, administered by the Commission. The  
7 Commission shall be responsible for filing any combined tax  
8 reports regarding State qualified savings programs required by  
9 the United States Internal Revenue Service. The Treasurer shall  
10 work with the Illinois Student Assistance Commission to  
11 coordinate the marketing of the College Savings Pool and the  
12 Illinois Prepaid Tuition Program when considered beneficial by  
13 the Treasurer and the Director of the Illinois Student  
14 Assistance Commission. The Treasurer's office shall not  
15 publicize or otherwise market the College Savings Pool or  
16 accept any moneys into the College Savings Pool prior to March  
17 1, 2000. The Treasurer shall provide a separate accounting for  
18 each designated beneficiary to each participant, the Illinois  
19 Student Assistance Commission, and the participating financial  
20 institution at which the account was processed. No interest in  
21 the program may be pledged as security for a loan. Moneys held  
22 in an account invested in the Illinois College Savings Pool  
23 shall be exempt from all claims of the creditors of the  
24 participant, donor, or designated beneficiary of that account,  
25 except for the non-exempt College Savings Pool transfers to or  
26 from the account as defined under subsection (j) of Section

1 12-1001 of the Code of Civil Procedure (735 ILCS 5/12-1001(j)).

2 The assets of the College Savings Pool and its income and  
3 operation shall be exempt from all taxation by the State of  
4 Illinois and any of its subdivisions. The accrued earnings on  
5 investments in the Pool once disbursed on behalf of a  
6 designated beneficiary shall be similarly exempt from all  
7 taxation by the State of Illinois and its subdivisions, so long  
8 as they are used for qualified expenses. Contributions to a  
9 College Savings Pool account during the taxable year may be  
10 deducted from adjusted gross income as provided in Section 203  
11 of the Illinois Income Tax Act. The provisions of this  
12 paragraph are exempt from Section 250 of the Illinois Income  
13 Tax Act.

14 The Treasurer shall adopt rules he or she considers  
15 necessary for the efficient administration of the College  
16 Savings Pool. The rules shall provide whatever additional  
17 parameters and restrictions are necessary to ensure that the  
18 College Savings Pool meets all of the requirements for a  
19 qualified state tuition program under Section 529 of the  
20 Internal Revenue Code (26 U.S.C. 529). The rules shall provide  
21 for the administration expenses of the pool to be paid from its  
22 earnings and for the investment earnings in excess of the  
23 expenses and all moneys collected as penalties to be credited  
24 or paid monthly to the several participants in the pool in a  
25 manner which equitably reflects the differing amounts of their  
26 respective investments in the pool and the differing periods of



1 time for which those amounts were in the custody of the pool.  
2 Also, the rules shall require the maintenance of records that  
3 enable the Treasurer's office to produce a report for each  
4 account in the pool at least annually that documents the  
5 account balance and investment earnings. Notice of any proposed  
6 amendments to the rules and regulations shall be provided to  
7 all participants prior to adoption. Amendments to rules and  
8 regulations shall apply only to contributions made after the  
9 adoption of the amendment.

10 Upon creating the College Savings Pool, the State Treasurer  
11 shall give bond with 2 or more sufficient sureties, payable to  
12 and for the benefit of the participants in the College Savings  
13 Pool, in the penal sum of \$1,000,000, conditioned upon the  
14 faithful discharge of his or her duties in relation to the  
15 College Savings Pool.

16 (Source: P.A. 92-16, eff. 6-28-01; 92-439, eff. 8-17-01;  
17 92-626, eff. 7-11-02; 93-812, eff. 1-1-05.)

18 Section 10. The Code of Civil Procedure is amended by  
19 changing Section 12-1001 as follows:

20 (735 ILCS 5/12-1001) (from Ch. 110, par. 12-1001)

21 Sec. 12-1001. Personal property exempt. The following  
22 personal property, owned by the debtor, is exempt from  
23 judgment, attachment, or distress for rent:

24 (a) The necessary wearing apparel, bible, school

1 books, and family pictures of the debtor and the debtor's  
2 dependents;

3 (b) The debtor's equity interest, not to exceed \$4,000  
4 in value, in any other property;

5 (c) The debtor's interest, not to exceed \$2,400 in  
6 value, in any one motor vehicle;

7 (d) The debtor's equity interest, not to exceed \$1,500  
8 in value, in any implements, professional books, or tools  
9 of the trade of the debtor;

10 (e) Professionally prescribed health aids for the  
11 debtor or a dependent of the debtor;

12 (f) All proceeds payable because of the death of the  
13 insured and the aggregate net cash value of any or all life  
14 insurance and endowment policies and annuity contracts  
15 payable to a wife or husband of the insured, or to a child,  
16 parent, or other person dependent upon the insured, whether  
17 the power to change the beneficiary is reserved to the  
18 insured or not and whether the insured or the insured's  
19 estate is a contingent beneficiary or not;

20 (g) The debtor's right to receive:

21 (1) a social security benefit, unemployment  
22 compensation, or public assistance benefit;

23 (2) a veteran's benefit;

24 (3) a disability, illness, or unemployment  
25 benefit; and

26 (4) alimony, support, or separate maintenance, to

1           the extent reasonably necessary for the support of the  
2           debtor and any dependent of the debtor.

3           (h) The debtor's right to receive, or property that is  
4           traceable to:

5                     (1) an award under a crime victim's reparation law;

6                     (2) a payment on account of the wrongful death of  
7           an individual of whom the debtor was a dependent, to  
8           the extent reasonably necessary for the support of the  
9           debtor;

10                    (3) a payment under a life insurance contract that  
11           insured the life of an individual of whom the debtor  
12           was a dependent, to the extent reasonably necessary for  
13           the support of the debtor or a dependent of the debtor;

14                    (4) a payment, not to exceed \$15,000 in value, on  
15           account of personal bodily injury of the debtor or an  
16           individual of whom the debtor was a dependent; and

17                    (5) any restitution payments made to persons  
18           pursuant to the federal Civil Liberties Act of 1988 and  
19           the Aleutian and Pribilof Island Restitution Act, P.L.  
20           100-383.

21           For purposes of this subsection (h), a debtor's right  
22           to receive an award or payment shall be exempt for a  
23           maximum of 2 years after the debtor's right to receive the  
24           award or payment accrues; property traceable to an award or  
25           payment shall be exempt for a maximum of 5 years after the  
26           award or payment accrues; and an award or payment and

1 property traceable to an award or payment shall be exempt  
2 only to the extent of the amount of the award or payment,  
3 without interest or appreciation from the date of the award  
4 or payment.

5 (i) The debtor's right to receive an award under Part  
6 20 of Article II of this Code relating to crime victims'  
7 awards.

8 (j) Moneys held in an account invested in the Illinois  
9 College Savings Pool of which the debtor is a participant  
10 or donor, except the following non-exempt contributions:

11 (1) any contribution to such account by the debtor  
12 as participant or donor that is made with the actual  
13 intent to hinder, delay, or defraud any creditor of the  
14 debtor;

15 (2) any contributions to such account by the debtor  
16 as participant during the 365 day period prior to the  
17 date of filing of the debtor's petition for bankruptcy  
18 that, in the aggregate during such period, exceed the  
19 amount of the annual gift tax exclusion under Section  
20 2503(b) of the Internal Revenue Code of 1986, as  
21 amended, in effect at the time of contribution; or

22 (3) any contributions to such account by the debtor  
23 as participant during the period commencing 730 days  
24 prior to and ending 366 days prior to the date of  
25 filing of the debtor's petition for bankruptcy that, in  
26 the aggregate during such period, exceed the amount of

1           the annual gift tax exclusion under Section 2503(b) of  
2           the Internal Revenue Code of 1986, as amended, in  
3           effect at the time of contribution.

4           For purposes of this subsection (j), "account"  
5           includes all accounts for a particular designated  
6           beneficiary, of which the debtor is a participant or donor.

7           Money due the debtor from the sale of any personal property  
8           that was exempt from judgment, attachment, or distress for rent  
9           at the time of the sale is exempt from attachment and  
10          garnishment to the same extent that the property would be  
11          exempt had the same not been sold by the debtor.

12          If a debtor owns property exempt under this Section and he  
13          or she purchased that property with the intent of converting  
14          nonexempt property into exempt property or in fraud of his or  
15          her creditors, that property shall not be exempt from judgment,  
16          attachment, or distress for rent. Property acquired within 6  
17          months of the filing of the petition for bankruptcy shall be  
18          presumed to have been acquired in contemplation of bankruptcy.

19          The personal property exemptions set forth in this Section  
20          shall apply only to individuals and only to personal property  
21          that is used for personal rather than business purposes. The  
22          personal property exemptions set forth in this Section shall  
23          not apply to or be allowed against any money, salary, or wages  
24          due or to become due to the debtor that are required to be  
25          withheld in a wage deduction proceeding under Part 8 of this  
26          Article XII.

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1 (Source: P.A. 94-293, eff. 1-1-06.)