SUBSTITUTE FOR

SENATE BILL NO. 599

A bill to create the Michigan education savings program; to provide for education savings accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "Michigan education savings program act".

Sec. 2. As used in this act:

(a) "Account" or "education savings account" means an account established under this act.

(b) "Account owner" means the individual who enters into a Michigan education savings program agreement and establishes an education savings account. The account owner may also be the designated beneficiary of the account.

(c) "Board" means the board of directors of the Michigan education trust described in section 10 of the Michigan education trust act, 1986 PA 316, MCL 390.1430.

(d) "Department" means the department of treasury.

(e) "Designated beneficiary" means the individual designated as the individual whose higher education expenses are expected to be paid from the account.

(f) "Eligible educational institution" means that term as defined in section 529 of the internal revenue code or a college, university, community college, or junior college described in section 4, 5, or 6 of article VIII of the state constitution of 1963 or established under section 7 of article VIII of the state constitution of 1963.

(g) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 1999 or at the option of the taxpayer, in effect for the current year.

(h) "Management contract" means the contract executed between the treasurer and the program manager.

(i) "Member of the family" means a family member as defined in section 529 of the internal revenue code.

(j) "Michigan education savings program agreement" means the agreement between the program manager and an account owner that establishes an education savings account.

(k) "Program" means the Michigan education savings program established pursuant to this act.

(*l*) "Program manager" means the entity selected by the treasurer to act as the manager of the program.

(m) "Qualified higher education expenses" means qualified higher education expenses as defined in section 529 of the internal revenue code of 1986.

(n) "Qualified withdrawal" means a distribution that is not subject to penalty or taxation under this act or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and that meets any of the following:

(*i*) A withdrawal from an account to pay the qualified higher education expenses incurred after the account is established of the designated beneficiary.

(*ii*) A withdrawal made as the result of the death or disability of the designated beneficiary of an account.

(*iii*) A withdrawal made because a beneficiary received a scholarship that paid for all of the qualified higher education expenses of the beneficiary.

(*iv*) A transfer of funds due to the termination of the management contract as provided in section 5.

(*v*) A transfer of funds due to a change of beneficiary as provided in section 8.

(o) "Treasurer" means the state treasurer.

Sec. 3. (1) The Michigan education savings program is established in the department of treasury.

(2) The treasurer shall solicit proposals from entities to be the program manager.

(3) The treasurer shall select as the program manager the entity that demonstrates the most advantageous combination, to

both potential participants and this state, of the following factors and the management contract shall address these factors:

(a) Financial stability.

(b) The safety of the investment instrument being offered.

(c) The ability of the investment instrument to track the increasing costs of higher education.

(d) The ability of the entity to satisfy the record-keeping and reporting requirements of this act.

(e) The entity's plan for marketing the program and the investment it is willing to make to promote the program.

(f) The fees, if any, proposed to be charged to persons for opening or maintaining an account.

(g) The minimum initial deposit and minimum contributions that the entity will require which shall not be greater than $25.00 for a cash contribution or $15.00 per pay period for pay-roll deduction plans.

(h) The ability of the program manager to accept electronic withdrawals, including payroll deduction plans.

(4) The treasurer shall enter into a contract with the program manager which shall address the respective authority and responsibility of the treasurer and the program manager to do all of the following:

(a) Develop and implement the program.

(b) Invest the money received from account owners in 1 or more investment instruments.

(c) Engage the services of consultants on a contractual basis to provide professional and technical assistance and advice.

(d) Determine the use of financial organizations as account depositories and financial managers.

(e) Charge, impose, and collect administrative fees and service charges which shall not exceed 1% of the average daily net assets of the program in connection with any agreements, contracts, and transactions relating to the program.

(f) Develop marketing plans and promotional material.

(g) Establish the methods by which funds are allocated to pay for administrative costs.

(h) Provide criteria for terminating and not renewing the management contract.

(i) Address the ability of the program manager to take any action required to keep the program in compliance with requirements of this act and its management contract and to manage the program to qualify as a qualified state tuition program under section 529 of the internal revenue code of 1986.

(j) Keep adequate records of each account and provide the treasurer with information that the treasurer requires related to those records.

(k) Compile the information contained in statements required to be prepared under this act and provide that compilation to the treasurer in a timely manner.

(*l*) Hold all accounts for the benefit of the account owner.

(m) Provide for audits at least annually by a firm of certified public accountants.

(n) Provide the treasurer with copies of all regulatory filings and reports related to the program made during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports except to the extent those filings or reports are related to or are a part of the program. It is the responsibility of the program manager to make available for review by the treasurer the results of any periodic examination of the program manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports are not required to be disclosed under state or federal law.

(o) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed by the program manager.

(p) Take any other necessary and proper activities to carry out the purposes of this act.

Sec. 4. The treasurer shall be responsible for the ongoing supervision of the management contract in consultation with the board.

Sec. 5. (1) The management contract shall be for a term of years specified in the management contract.

(2) The treasurer may terminate the management contract based on the criteria specified in the management contract.

Sec. 6. The treasurer may enter into contracts that it considers necessary and proper for the implementation of this program.

Sec. 7. (1) Beginning October 1, 2000, education savings accounts may be established under this act.

(2) Any individual may open 1 or more education savings accounts to save money to pay the qualified higher education expenses of 1 or more designated beneficiaries.

(3) To open an education savings account, the individual shall enter into a Michigan education savings program agreement with the program manager. The Michigan education savings program agreement shall be in the form prescribed by the program manager and approved by the treasurer and contain all of the following:

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

(b) A designated beneficiary.

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

(d) Any other information that the treasurer or program manager considers necessary.

(4) Any individual may make contributions to an account.

(5) Contributions to accounts shall only be made in cash, by check, by money order, by credit card, or by any similar method but shall not be property.

(6) An account owner may withdraw all or part of the balance from an account on 60 days’ notice, or a shorter period as authorized in the Michigan education savings program agreement.

(7) Distributions from an account shall be used to pay for qualified higher education expenses incurred after the account is established and only in any of the following circumstances:

(a) The distribution is made directly to an eligible education institution.

(b) The distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution.

(c) The distribution is made after the designated beneficiary submits documentation to show that the distribution is a reimbursement for qualified higher education expenses that the designated beneficiary has already paid and the program has a process for reviewing the validity of the documentation prior to the distribution.

(d) All of the following apply:

(*i*) The designated beneficiary certifies prior to the distribution that the distribution will be expended for his or her qualified higher education expenses within a reasonable time after the distribution is made.

(*ii*) The program requires the designated beneficiary to provide documentation of payment of qualified higher education expenses within 30 days after making the distribution and has a process for reviewing the documentation.

(*iii*) The program retains an account balance that is large enough to collect any penalty owed on the distribution if valid documentation is not produced.

(8) If a distribution that is not a qualified withdrawal is made, the program manager shall withhold an amount equal to 10% of the distribution amount as a penalty and pay that amount to the department for deposit into the general fund. The penalty under this subsection may be increased or decreased if the treasurer and the program manager determine that it is necessary to increase or decrease the penalty to constitute a greater than de minimis penalty for purposes of qualifying under section 529 of the internal revenue code.

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

Sec. 8. (1) An account owner may designate another individual as a successor owner of the account in the event of the death of the account owner.

(2) An account owner may change the designated beneficiary of an account to a member of the family of the previously designated beneficiary as provided in the management contract or as otherwise provided in this act.

(3) An account owner may transfer all or a portion of an account to another education savings account. The designated beneficiary of the account to which the transfer is made must be a member of the family.

(4) Changes in designated beneficiaries and transfers under this section are not permitted to the extent that the change or transfer would constitute excess contributions or unauthorized investment choices.

Sec. 9. (1) No account owner or designated beneficiary of any account shall direct the investment of any contributions to an account or the earnings on an account.

(2) An individual who establishes an account may select among different investment strategies designed exclusively by the program manager, only at the time the initial contribution is made that establishes the account. The program may allow board members or employees of the program, or the board members or employees of a contractor hired by the program to perform administrative services, to make contributions to an account.

(3) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account has no force or effect.

Sec. 10. (1) The total contributions to all of the accounts that name any 1 individual as the designated beneficiary shall not exceed a maximum of $125,000.00.

(2) Any amount in excess of the amount in subsection (1) with respect to a designated beneficiary shall be promptly withdrawn and is not a qualified withdrawal or shall be transferred to another account.

Sec. 11. (1) The program manager shall report distributions from an account to any individual or for the benefit of any individual during a tax year to the internal revenue service and the account owner or, to the extent required by federal law or regulation, to the distributee.

(2) The program manager shall provide statements that identify the individual contributions made during the tax year,

the total contributions made to the account for the tax year, the value of the account at the end of the tax year, distributions made during the tax year, and any other information that the treasurer requires to each account owner on or before the January 31 following the end of each calendar year.

Sec. 12. The program manager shall disclose the following information in writing to each account owner of an education savings account and any other person who requests information about an education savings account:

(a) The terms and conditions for establishing an education savings account.

(b) Restrictions on the substitutions of designated beneficiaries and transfer of account funds.

(c) The person or entity entitled to terminate a Michigan education savings program agreement.

(d) The period of time during which a designated beneficiary may receive benefits under the Michigan education savings program agreement.

(e) The terms and conditions under which money may be wholly or partially withdrawn from an account or the program, including, but not limited to, any reasonable charges and fees and penalties that may be imposed for withdrawal.

(f) The potential tax consequences associated with contributions to and distributions and withdrawals from accounts.

(g) Investment history and potential growth of account funds and a projection of the impact of the growth of the account funds on the maximum amount allowable in an account.

(h) All other rights and obligations under Michigan education savings program agreements and any other terms, conditions, and provisions of a contract or an agreement entered into under this act.

Sec. 13. This act and any agreement under this act shall not be construed or interpreted to do any of the following:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner.

(b) Guarantee that a designated beneficiary will be admitted to an eligible educational institution or, upon admission to an eligible educational institution, will be permitted to continue to attend or will receive a degree from the eligible educational institution.

(c) Give residency status to an individual merely because the individual is a designated beneficiary.

(d) Guarantee that amounts contributed to an account will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

Sec. 14. (1) This act does not create and shall not be construed to create any obligation upon this state or any agency or instrumentality of this state to guarantee for the benefit of an account owner or designated beneficiary any of the following:

(a) The rate of interest or other return on an account.

(b) The payment of interest or other return on an account.

(2) The contracts, applications, deposit slips, and other similar documents used in connection with a contribution to an

account shall clearly indicate that the account is not insured by this state and that the money deposited into and investment return earned on an account are not guaranteed by this state.

Sec. 15. The program manager shall file an annual report with the treasurer and the board that includes all of the following:

(a) The names and identification numbers of account owners, designated beneficiaries, and distributees of family tuition accounts. The information reported pursuant to this subdivision is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(b) The total amount contributed to all accounts during the year.

(c) All distributions from all accounts and whether or not each distribution was a qualified withdrawal.

(d) Any information that the program manager or treasurer may require regarding the taxation of amounts contributed to or withdrawn from accounts.

Sec. 16. (1) Contributions to and interest earned on an education savings account are exempt from taxation as provided in sections 30 and 30f of the income tax act of 1967, 1967 PA 281, MCL 206.30 and 206.30f.

(2) Withdrawals made from education savings accounts are taxable as provided in section 30 of the income tax act of 1967, 1967 PA 281, MCL 206.30.

Enacting section 1. This act does not take effect unless Senate Bill No. 600 of the 90th Legislature is enacted into law.