

SUBSTITUTE FOR
HOUSE BILL NO. 5317

A bill to amend 2000 PA 161, entitled
"Michigan education savings program act,"
by amending sections 2, 3, 7, 9, and 10 (MCL 390.1472, 390.1473,
390.1477, 390.1479, and 390.1480).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

4 (b) "Account owner" means ~~the~~ ANY OF THE FOLLOWING:

5 (i) THE individual who enters into a Michigan education sav-
6 ings program agreement and establishes an education savings
7 account. The account owner may also be the designated benefi-
8 ciary of the account.

9 (ii) AN ENTITY EXEMPT FROM TAXATION UNDER SECTION 501(c)(3)
10 OF THE INTERNAL REVENUE CODE OF 1986 THAT ENTERS INTO A MICHIGAN

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1 EDUCATION SAVINGS PROGRAM AGREEMENT AND ESTABLISHES AN EDUCATION
2 SAVINGS ACCOUNT.

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

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

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

10 (f) "Eligible educational institution" means that term as
11 defined in section 529 of the internal revenue code or a college,
12 university, community college, or junior college described in
13 section 4, 5, or 6 of article VIII of the state constitution of
14 1963 or established under section 7 of article VIII of the state
15 constitution of 1963.

16 (g) "Internal revenue code" means the United States internal
17 revenue code of 1986 in effect on January 1, ~~1999~~ 2002 or at
18 the option of the taxpayer, in effect for the current year.

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

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

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

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

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

3 (m) "Qualified higher education expenses" means qualified
4 higher education expenses as defined in section 529 of the inter-
5 nal revenue code of 1986.

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

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

13 (ii) A withdrawal made as the result of the death or dis-
14 ability of the designated beneficiary of an account.

15 (iii) A withdrawal made because a beneficiary received a
16 scholarship that paid for all or part of the qualified higher
17 education expenses of the beneficiary to the extent the amount of
18 the withdrawal does not exceed the amount of the scholarship.

19 (iv) A transfer of funds due to the termination of the man-
20 agement contract as provided in section 5.

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

23 (o) "Treasurer" means the state treasurer.

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

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1 (2) The treasurer shall solicit proposals from entities to
2 be the program manager to provide the services described in
3 subsection (5).

4 (3) The purposes, powers, and duties of the Michigan educa-
5 tion savings program are vested in and shall be exercised by the
6 treasurer or the designee of the treasurer.

7 (4) The state treasurer shall administer the Michigan educa-
8 tion savings program and shall be the trustee for the funds of
9 the Michigan education savings program.

10 (5) The treasurer may employ or contract with personnel and
11 contract for services necessary for the administration of the
12 program and the investment of the assets of the program includ-
13 ing, but not limited to, managerial, professional, legal, cleri-
14 cal, technical, and administrative personnel or services.

15 (6) When selecting a program manager, the treasurer shall
16 give preference to proposals from single entities that propose to
17 provide all of the functions described in subsection (5) and that
18 demonstrate the most advantageous combination, to both potential
19 participants and this state, of the following factors and the
20 management contract shall address these factors:

21 (a) Financial stability.

22 (b) The safety of the investment instruments being offered.

23 (c) The ability of the investment instruments to track the
24 increasing costs of higher education.

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

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

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

5 (g) The minimum initial deposit and minimum contributions
6 that the entity will require which, for the first year of the
7 program, shall not be greater than \$25.00 for a cash contribution
8 or \$15.00 per pay period for payroll deduction plans.

9 (h) The ability of the entity to accept electronic withdraw-
10 als, including payroll deduction plans.

11 (7) The treasurer shall enter into a contract with the pro-
12 gram manager which shall address the respective authority and
13 responsibility of the treasurer and the program manager to do all
14 of the following:

15 (a) Develop and implement the program.

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

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

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

23 (e) Charge, impose, and collect annual administrative fees
24 and service in connection with any agreements, contracts, and
25 transactions relating to individual accounts which shall not
26 exceed 1.5% of the average daily net assets of the account.

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- 1 (f) Develop marketing plans and promotional material.
- 2 (g) Establish the methods by which funds are allocated to
3 pay for administrative costs.
- 4 (h) Provide criteria for terminating and not renewing the
5 management contract.
- 6 (i) Address the ability of the program manager to take any
7 action required to keep the program in compliance with require-
8 ments of this act and its management contract and to manage the
9 program to qualify as a qualified ~~state~~ tuition program under
10 section 529 of the internal revenue code of 1986.
- 11 (j) Keep adequate records of each account and provide the
12 treasurer with information that the treasurer requires related to
13 those records.
- 14 (k) Compile the information contained in statements required
15 to be prepared under this act and provide that compilation to the
16 treasurer in a timely manner.
- 17 (l) Hold all accounts for the benefit of the account owner.
- 18 (m) Provide for audits at least annually by a firm of certi-
19 fied public accountants.
- 20 (n) Provide the treasurer with copies of all regulatory fil-
21 ings and reports related to the program made during the term of
22 the management contract or while the program manager is holding
23 any accounts, other than confidential filings or reports except
24 to the extent those filings or reports are related to or are a
25 part of the program. It is the responsibility of the program
26 manager to make available for review by the treasurer the results
27 of any periodic examination of the program manager by any state

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1 or federal banking, insurance, or securities commission, except
2 to the extent that the report or reports are not required to be
3 disclosed under state or federal law.

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

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

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

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

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

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

21 (b) A designated beneficiary.

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

24 (d) Any other information that the treasurer or program man-
25 ager considers necessary.

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

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

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

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

10 (a) The distribution is made directly to an eligible educa-
11 tion institution.

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

15 (c) The distribution is made after the designated benefi-
16 ciary submits documentation to show that the distribution is a
17 reimbursement for qualified higher education expenses that the
18 designated beneficiary has already paid and the program has a
19 process for reviewing the validity of the documentation prior to
20 the distribution.

21 (d) All of the following apply:

22 (i) The designated beneficiary certifies prior to the dis-
23 tribution that the distribution will be expended for his or her
24 qualified higher education expenses within a reasonable time
25 after the distribution is made.

26 (ii) The program requires the designated beneficiary to
27 provide documentation of payment of qualified higher education

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1 expenses within 30 days after making the distribution and has a
2 process for reviewing the documentation.

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

6 (8) ~~if a~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION
7 FOR TAX YEARS THAT BEGIN BEFORE JANUARY 1, 2002, IF THE distribu-
8 tion ~~that~~ is not a qualified withdrawal, ~~is made,~~ the program
9 manager shall withhold an amount equal to 10% of the distribution
10 amount as a penalty and pay that amount to the department for
11 deposit into the general fund. FOR A DISTRIBUTION MADE AFTER
12 DECEMBER 31, 2001 THAT IS NOT A QUALIFIED WITHDRAWAL, IF A TAX OR
13 PENALTY IS IMPOSED UNDER SECTION 529 OF THE INTERNAL REVENUE CODE
14 PURSUANT TO SECTION 530(d)(4) OF THE INTERNAL REVENUE CODE, A
15 PENALTY SHALL NOT BE IMPOSED UNDER THIS SUBSECTION FOR THAT
16 DISTRIBUTION. IF A DISTRIBUTION THAT IS NOT A QUALIFIED WITH-
17 DRAWAL IS MADE AFTER DECEMBER 31, 2001 AND A TAX OR PENALTY IS
18 NOT IMPOSED UNDER SECTION 529 OF THE INTERNAL REVENUE CODE PURSU-
19 ANT TO SECTION 530(d)(4) OF THE INTERNAL REVENUE CODE, ON THAT
20 DISTRIBUTION, THE PROGRAM MANAGER SHALL WITHHOLD AN AMOUNT EQUAL
21 TO 10% OF THE ACCUMULATED EARNINGS ATTRIBUTABLE TO THAT DISTRIBUTION
22 AMOUNT AS A PENALTY AND PAY THAT AMOUNT TO THE DEPARTMENT
23 FOR DEPOSIT INTO THE GENERAL FUND. The penalty under this subsec-
24 tion may be increased or decreased if the treasurer and the pro-
25 gram manager determine that it is necessary to increase or
26 decrease the penalty to constitute a greater than de minimis

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1 penalty for purposes of qualifying under section 529 of the
2 internal revenue code.

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

5 Sec. 9. (1) ~~No~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-
6 TION, AN account owner or A designated beneficiary of any account
7 shall NOT direct the investment of any contributions to an
8 account or the earnings on an account.

9 (2) An individual who establishes an account may select
10 among different investment strategies designed exclusively by the
11 program manager, ~~only~~ at the time the initial contribution is
12 made that establishes the account AND ONCE EACH CALENDAR YEAR
13 AFTER THE INITIAL SELECTION TO THE EXTENT ALLOWED UNDER THE
14 INTERNAL REVENUE CODE. The program may allow board members or
15 employees of the program, or the board members or employees of a
16 contractor hired by the program to perform administrative serv-
17 ices, to make contributions to an account.

18 (3) ~~Neither an account owner nor a designated beneficiary~~
19 ~~may use an~~ AN interest in an account SHALL NOT BE USED BY AN
20 ACCOUNT HOLDER OR A DESIGNATED BENEFICIARY as security for a
21 loan. Any pledge of an interest in an account has no force or
22 effect.

23 Sec. 10. (1) The ~~total contributions to~~ MAXIMUM ACCOUNT
24 BALANCE IN all of the accounts that name any 1 individual as the
25 designated beneficiary shall not exceed a maximum of
26 \$125,000.00.

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

5 Enacting section 1. This amendatory act takes effect
6 January 1, 2002.