

Act No. 215
Public Acts of 2001
Approved by the Governor
December 27, 2001
Filed with the Secretary of State
December 27, 2001
EFFECTIVE DATE: January 1, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Rep. DeRossett

ENROLLED HOUSE BILL No. 5317

AN ACT to amend 2000 PA 161, entitled "An act 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," by amending sections 2, 3, 7, 8, 9, and 10 (MCL 390.1472, 390.1473, 390.1477, 390.1478, 390.1479, and 390.1480).

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) "Account" or "education savings account" means an account established under this act.
- (b) "Account owner" means any of the following:
 - (i) 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.
 - (ii) An entity exempt from taxation under section 501(c)(3) of the internal revenue code that enters into a Michigan education savings program agreement and establishes an education savings 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, 2002 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 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.

(n) "Qualified withdrawal" means a distribution that is not subject to a penalty or an excise tax under section 529 of the internal revenue code, a penalty under this act, or taxation under 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 of the designated beneficiary incurred after the account is established.

(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 or part of the qualified higher education expenses of the beneficiary to the extent the amount of the withdrawal does not exceed the amount of the scholarship.

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

(v) A transfer of funds 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 to provide the services described in subsection (5).

(3) The purposes, powers, and duties of the Michigan education savings program are vested in and shall be exercised by the treasurer or the designee of the treasurer.

(4) The state treasurer shall administer the Michigan education savings program and shall be the trustee for the funds of the Michigan education savings program.

(5) The treasurer may employ or contract with personnel and contract for services necessary for the administration of the program and the investment of the assets of the program including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

(6) When selecting a program manager, the treasurer shall give preference to proposals from single entities that propose to provide all of the functions described in subsection (5) and that demonstrate 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 instruments being offered.

(c) The ability of the investment instruments 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, for the first year of the program, shall not be greater than \$25.00 for a cash contribution or \$15.00 per pay period for payroll deduction plans.

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

(7) 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 annual administrative fees and service in connection with any agreements, contracts, and transactions relating to individual accounts which shall not exceed 1.5% of the average daily net assets of the account.

(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 tuition program under section 529 of the internal revenue code.

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

(2) Any individual or entity described in section 2(b)(ii) may open 1 or more education savings accounts to save money to pay the qualified higher education expenses of 1 or more designated beneficiaries. An account owner shall open only 1 account for any 1 designated beneficiary. Each account opened under this act shall have only 1 designated beneficiary.

(3) To open an education savings account, the individual or entity described in section 2(b)(ii) shall enter into a Michigan education savings program agreement with the program. 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 or entity described in section 2(b)(ii) 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 under subsection (8) on the distribution if valid documentation is not produced.

(8) Except as otherwise provided in this subsection for tax years that begin before January 1, 2002, if the distribution is not a qualified withdrawal, 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. For a distribution made after December 31, 2001 that is not a qualified withdrawal, if an excise tax or penalty is imposed under section 529 of the internal revenue code pursuant to section 530(d)(4) of the internal revenue code, a penalty shall not be imposed under this subsection for that distribution. If a distribution that is not a qualified withdrawal is made after December 31, 2001 and an excise tax or penalty is not imposed under section 529 of the internal revenue code pursuant to section 530(d)(4) of the internal revenue code on that distribution, the program manager shall withhold an amount equal to 10% of the accumulated earnings attributable to that 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 comply with 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) An account owner may transfer all or a portion of an account to an account in a qualified tuition program under section 529 of the internal revenue code, other than the program under this act, once every 12 months, without a change in designated beneficiary.

(5) 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) Except as otherwise provided in this section, an account owner or a designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings on an account.

(2) An account owner may select among different investment strategies designed exclusively by the program manager in all of the following circumstances to the extent allowed under section 529 of the internal revenue code:

(a) At the time any contribution is made to an account with respect to the amount of that contribution.

(b) Once each calendar year with respect to the accumulated account balance.

(c) When an account owner makes a change in designated beneficiary of an account.

(3) 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.

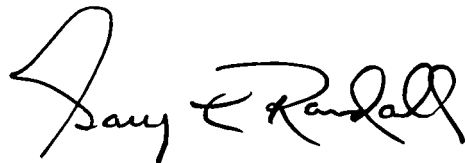
(4) An interest in an account shall not be used by an account owner or a designated beneficiary as security for a loan. Any pledge of an interest in an account has no force or effect.

Sec. 10. (1) The maximum account balance limit for all of the accounts that name any 1 individual as the designated beneficiary shall not exceed a maximum of \$235,000.00.

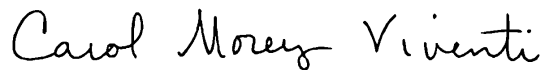
(2) The program shall reject a contribution to any account for a designated beneficiary if, at the time of the contribution, the total balance of all accounts for that designated beneficiary has reached the maximum account balance limit under subsection (1). Accounts may continue to accrue earnings if the total balance of all accounts for that beneficiary has reached the maximum account balance limit and shall not be considered to have exceeded the maximum account balance limit under subsection (1). For purposes of this subsection, the total balance of all accounts for that designated beneficiary includes the amount of payment or payments required from a purchaser on behalf of a qualified beneficiary made under an advance tuition payment contract as provided in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, if the designated beneficiary is also the qualified beneficiary.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

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Governor.