

Act No. 388
Public Acts of 2004
Approved by the Governor
October 12, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Rep. DeRossett

ENROLLED HOUSE BILL No. 5783

AN ACT to amend 1986 PA 316, entitled "An act to create the Michigan education trust; to prescribe the powers and duties of the trust and of its board of directors; to provide for advance tuition payment contracts; to establish an advance tuition payment fund and to provide for its administration; to provide for remedies; and to repeal certain acts and parts of acts on specific dates," by amending sections 6, 7, and 8 (MCL 390.1426, 390.1427, and 390.1428); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 6. (1) The trust, on behalf of itself and the state, may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary to attend any of the state institutions of higher education to which the qualified beneficiary is admitted, without further tuition cost to the qualified beneficiary. In addition, an advance tuition payment contract shall set forth in a clear, understandable manner all of the following:

- (a) The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary.
- (b) The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, is due.
- (c) Provisions for late payment charges and for default.
- (d) The name and age of the qualified beneficiary under the contract, unless the contract is purchased by a state or local government agency or instrumentality or a person exempt from taxation as an organization described in section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, as part of a scholarship program. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named.
- (e) The number of credit hours covered by the contract.
- (f) The name of the person entitled to terminate the contract. The contract may provide for termination by the purchaser, the qualified beneficiary, a person appointed to act on behalf of the purchaser or qualified beneficiary, or any combination of these persons.
- (g) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary if the contract so provides, is entitled upon termination.
- (h) The assumption of a contractual obligation by the trust to the qualified beneficiary on its own behalf and on behalf of the state to provide for credit hours of higher education, not to exceed the credit hours required for the granting of a baccalaureate degree, at any state institution of higher education to which the qualified beneficiary is

admitted. The advance tuition payment contract shall provide for the credit hours of higher education that a qualified beneficiary may receive under the contract if the qualified beneficiary is not entitled to in-state tuition rates.

(i) The period of time from the beginning to the end of which the qualified beneficiary may receive the benefits under the contract.

(j) All other rights and obligations of the purchaser and the trust.

(k) Other terms, conditions, and provisions as the trust considers in its sole discretion to be necessary or appropriate.

(2) The trust shall not enter into any advance tuition payment contract unless the state administrative board has approved of the form of that contract.

(3) The trust shall make any arrangements that are necessary or appropriate with state institutions of higher education in order to fulfill its obligations under advance tuition payment contracts. The arrangements may include, but need not be limited to, the payment by the trust of the then actual in-state tuition cost on behalf of a qualified beneficiary to the state institution of higher education.

(4) An advance tuition payment contract shall provide that the trust provide for the qualified beneficiary to attend a community or junior college in this state before entering a state institution of higher education if the beneficiary so chooses and that the contract may be terminated pursuant to section 8 after completing the requirements for a degree at the community or junior college in this state or before entering the state institution of higher education.

(5) An advance tuition payment contract may provide that, if after a number of years specified in the contract the contract has not been terminated or the qualified beneficiary's rights under the contract have not been exercised, the trust, after making a reasonable effort to locate the purchaser and qualified beneficiary or the agent of either, shall retain the amounts otherwise payable and the rights of the qualified beneficiary, the purchaser, or the agent of either shall be considered terminated.

(6) A writing or information provided to the trust for purposes of this section by a purchaser, qualified beneficiary, or person appointed under subsection (1)(f) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. As used in this subsection, "writing" means that term as defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

Sec. 7. (1) At a minimum, the trust shall offer 1 of the 2 types of advance tuition payment contracts set forth in subsections (2) and (3), to be known as Plan A and Plan B, respectively.

(2) Under Plan A:

(a) A payment or series of payments shall be required from the purchaser on behalf of a qualified beneficiary.

(b) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to section 8(1)(d), the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, but shall not refund any investment income attributable to the payments.

(c) Except as provided in subdivision (d), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(d) As an alternative to subdivision (c), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for a fixed number of credit hours, as permitted by the trust, less than the total number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(3) Under Plan B:

(a) A payment or series of payments shall be required on behalf of a qualified beneficiary.

(b) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to section 8(1)(d), the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, together with all or a specified portion of accrued investment income attributable to the payment or payments as may be agreed to in the contract.

(c) Except as provided in subdivision (d), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(d) As an alternative to subdivision (c), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for a fixed number of credit hours, as permitted by the trust, less than the total number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(4) Contracts required to be offered by this section may require that payment or payments from a purchaser, on behalf of a qualified beneficiary who may attend a state institution of higher education in less than 4 years after the date the contract is entered into by the purchaser, be based upon attendance at a certain state institution of higher education or at that state institution of higher education with the highest prevailing tuition cost for the number of credit hours covered by the contract.

(5) A contract offered by the trust under this section shall be offered with 2 alternatives. The first alternative shall offer an advance tuition payment contract that provides the credit hours of higher education necessary for the granting of a baccalaureate degree at any of the state institutions of higher education. The second alternative shall provide that the number of credit hours of higher education a qualified beneficiary may receive under the contract will be reduced to a percentage of the credit hours required for the granting of a baccalaureate degree at a state institution of higher education, as specified in the contract, if the qualified beneficiary enrolls in a state institution of higher education imposing at the time the qualified beneficiary enrolls an annual tuition rate that is greater than 105% of the weighted average annual tuition rate of all state institutions of higher education. This subsection does not preclude a state institution of higher education at which a qualified beneficiary is entitled to receive less than the minimum number of credit hours required for the granting of a baccalaureate degree from providing that qualified beneficiary, without further tuition charges, the additional credit hours necessary to receive a baccalaureate degree.

(6) If a beneficiary of an advance tuition payment contract with either alternative designation described in subsection (5) attends a community or junior college for 2 years at the in-district tuition rate, that beneficiary then may attend any state institution of higher education at no additional tuition cost and receive the number of credit hours necessary for the awarding of a baccalaureate degree.

Sec. 8. (1) An advance tuition payment contract shall authorize a termination of the contract when any 1 of the following occurs:

(a) The qualified beneficiary dies.

(b) The qualified beneficiary is not admitted to a state institution of higher education after making proper application.

(c) The qualified beneficiary certifies to the trust that he or she has decided to attend and has been accepted by a Michigan independent, degree-granting institution of postsecondary education recognized by the state board of education or, after he or she has a high school diploma or has reached the age of majority, he or she has decided not to attend a state institution of higher education and requests, in writing, before July 15 of the year in which the qualified beneficiary desires to terminate the contract, that the advance tuition payment contract be terminated.

(d) Other circumstances, determined by the trust and set forth in the advance tuition payment contract, occur.

(2) Except as provided in section 7(2)(b) and (3)(b) and subsection (5), an advance tuition payment contract shall provide for a refund upon termination of the contract to a person to whom the refund is payable under the contract. All of the following apply to the refund described in this subsection:

(a) If the qualified beneficiary has a high school diploma or has reached the age of majority, and attends an institution of higher education, the amount of a refund, except as provided in subsection (4), is the lesser of the average tuition cost of all state institutions of higher education on the date of termination of the contract, or the face amount of the payment or payments and any accrued investment income attributable to the payment or payments, if he or she is covered by the first alternative described in section 7(5), or the lowest tuition cost of all state institutions of higher education on the date of termination of the contract if he or she is covered by the second alternative described in section 7(5) or does not attend an institution of higher education.

(b) The amount of a refund shall be reduced by an appropriate percentage if the purchaser entered into an advance tuition payment contract that provided for a fixed number of credit hours less than the total number of credit hours required by a state institution of higher education for the awarding of a baccalaureate degree, by the amount transferred to a community or junior college on behalf of a qualified beneficiary when the contract is terminated as provided in section 6(4), and by the amount transferred to a state institution of higher education on behalf of a qualified beneficiary.

(c) The contract may provide that the trust may deny payment of a refund upon termination of the contract if the qualified beneficiary has completed more than 1/2 of the credit hours required by the state institution of higher education for the awarding of a baccalaureate degree. However, this subdivision shall not affect the termination and refund rights of a graduate of a community or junior college.

(d) Except as provided by subsection (3), the trust shall make refund payments in equal installments over 4 years and not later than August 15 of the year due.

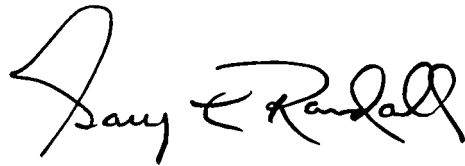
(3) An advance tuition payment contract shall authorize a person, who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the refund to an independent degree-granting college or university located in this state or to a community or junior college located in this state. If directed to make payments pursuant to this subsection, the trust shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary, but the trust shall not transfer a cumulative amount greater than the refund to which the person is entitled. If the refund exceeds the total amount of transfers directed to the designated institution, the excess shall be returned to the person to whom the refund is otherwise payable.

(4) Notwithstanding any other section of this act, the amount of a refund paid upon termination of the advance tuition payment contract by a person who directs the trust pursuant to subsection (3) to transfer the refund to an independent degree-granting college or university located in this state shall not be less than the prevailing weighted average tuition cost of state institutions of higher education for the number of credit hours covered by the contract on the date of termination. In calculating the amount of a refund for an advance payment contract containing the restrictions provided by section 7(5), the prevailing weighted average tuition cost shall be based upon only those state institutions of higher education at which the qualified beneficiary could have received sufficient credit hours for a baccalaureate degree.

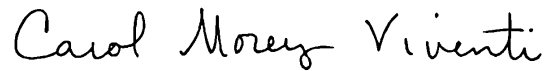
(5) The trust may offer an advance tuition payment contract that does not provide for a refund under subsection (2) to a purchaser who is an individual, state or local government agency or instrumentality, or a person exempt from taxation as an organization described in section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, and who is purchasing the contract as part of a scholarship program. The price of a contract offered pursuant to this subsection shall be established to reflect that the terms of the contract do not provide for a refund.

Enacting section 1. Sections 23 and 24 of the Michigan education trust act, 1986 PA 316, MCL 390.1443 and 390.1444, are repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor