SENATE BILL No. 640

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June 23, 2005, Introduced by Senators THOMAS and HARDIMAN and referred to the Committee on Banking and Financial Institutions.

A bill to permit the establishment and maintenance of individual or family development accounts; to provide for certain tax deductions; to prescribe the requirements of and restrictions on individual or family development accounts; and to provide penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "individual or family development account program act".

Sec. 2. As used in this act:

(a) "Account holder" means a person who is the owner of an individual or family development account or the family if the account is a family account and who meets all of the following criteria:

(*i*) Is 18 years of age or older.

(*ii*) Is a resident of this state.

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(*iii*) Is a United States citizen or resident alien.

(b) "Community development organization" or "organization" means a charitable organization exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501, that is approved by the director of the department of labor and economic growth or his or her designee to implement the individual or family development account program.

(c) "Contributor" means a person that makes a deposit to an individual or family development account and is not the account holder.

(d) "Department" means the department of labor and economic growth.

(e) "Director" means the director of the department of labor and economic growth.

(f) "Education expenses" means tuition and fees required for the enrollment or attendance of a student who is 18 years of age or older, a resident of this state, and a United States citizen at an eligible educational institution, and expenses for fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(g) "Eligible educational institution" means any of the following:

(*i*) 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.

(*ii*) A state-licensed vocational or technical education program.

(*iii*) A state-licensed proprietary school.

(*iv*) An independent nonprofit college or university located in this state.

(h) "Federal poverty level" means the most recent federal poverty guidelines published annually in the federal register by the United States department of health and human services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 USC 9902.

(i) "Financial institution" means a state chartered bank, savings and loan association, credit union, or trust company authorized to act as fiduciary and under the supervision of the office of financial and insurance services in the department of labor and economic growth; or a national banking association or federal savings and loan association or credit union authorized to act as fiduciary in this state.

(j) "Individual or family development account" or "account" means a financial instrument established pursuant to section 4.

(k) "Individual or family development account reserve fund" or "reserve fund" means a fund created by an approved community development organization to fund the costs incurred to administer a program and to provide matching funds for money in an account.

(*l*) "Program" means the individual or family development account program established in section 3.

(m) "Program contributor" means a person that makes a contribution to an account reserve fund and is not either of the following:

(*i*) The account holder.

(*ii*) A contributor that is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

(n) "Small business" means a business that meets the criteria set forth in 13 CFR 101-1205 for a business that has the same North American industry classification systems (NAICS) code classification of that business.

Sec. 3. (1) The individual or family development account program is established within the department. The program shall provide eligible individuals and families with an opportunity to establish accounts to be used for education, home ownership or improvements, or small business capitalization as provided in section 4.

(2) The department shall solicit proposals from community development organizations to administer the accounts on a not-for-profit basis. Community development organization proposals shall include both of the following:

(a) A requirement that the individual or family account holder match contributions of a community development organization by contributing cash or volunteer work.

(b) A process for including account holders in decision making regarding the investment of money in their accounts.

(3) In reviewing the proposals of community development organizations, the department shall consider all of the following factors:

(a) The not-for-profit status of the organization.

(b) The fiscal accountability of the organization.

(c) The ability of the organization to provide or raise money for matching contributions.

(d) The ability of the organization to establish and administer a reserve fund.

(e) The significance and quality of proposed auxiliary services.

(f) The relationship of proposed auxiliary services to the goals of the individual or family development account program.

(4) The department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this act.

Sec. 4. (1) An individual or family whose household income is less than or equal to 200% of the federal poverty level for an individual or that family's family size may establish an individual or family development account with a financial institution for the purpose of accumulating and withdrawing money for qualified expenses. The account holder may withdraw money from the account without penalty for any of the following qualified expenses:

(a) Educational expenses for the individual account holder or any member of the family if the account is a family development account for postsecondary education at an eligible educational institution.

(b) First-time purchase of a primary residence by the individual account holder or any member of the family who is 18 years of age or older, a resident of this state, and a United States citizen if the account is a family development account.

(c) Major repairs or improvements to a primary residence of the individual account holder or any member of the family who is 18 years of age or older, a resident of this state, and a United States citizen if the account is a family development account.

(d) Start-up capitalization of a small business for the individual account holder or any member of the family who is 18 years of age or older, a resident of this state, and a United States citizen.

(2) A financial institution approved by the department may accept deposits into individual or family development accounts. The financial institution that accepts deposits shall certify to the department and the community development organization that administers each account, on forms prescribed by the department and accompanied by any documentation required by the department, that the accounts have been established pursuant to this act and that deposits have been made on behalf of the account holder.

(3) A financial institution in which an account has been established shall do all of the following:

(a) Keep the account in the name of both the account holder and the administrator of the community development organization that administers the account.

(b) Permit deposits to be made to the account by the following, subject to the indicated conditions:

(*i*) The account holder.

(*ii*) A contributor, if the deposit is made on behalf of an account holder. A deposit under this subparagraph may include money to match the account holder's deposits.

(c) Provide that the accounts earn the market rate of interest.

(d) Permit the account holder to withdraw money from the account for any of the purposes listed in subsection (1).

(4) The maximum total of all deposits made into an account in a tax year that is exempt from taxation for that tax year is $2,500.00. The total maximum balance in an account that is exempt from taxation is $5,000.00. Accumulated interest earned on an account is not included for purposes of this subsection.

(5) If a contribution to an account will cause the account balance to exceed the maximum total for a tax year or the maximum balance in an account, the financial institution shall notify the account holder or other contributor and the administrator of the community development organization that administers the account that making the deposit will cause the account balance to exceed the statutory maximums. Deposits that exceed the maximums shall be returned to the contributor who makes the contribution or shall be returned on a pro rata basis among multiple contributors.

Sec. 5. (1) Money withdrawn during a tax year from an account by an account holder that is not withdrawn pursuant to section 4 is subject to the following:

(a) The first time an account holder withdraws money from an account that is not withdrawn pursuant to section 4, a penalty of 15% of the amount of the withdrawal.

(b) The second time an account holder withdraws money from an account that is not withdrawn pursuant to section 4, a penalty of 15% of the amount of the withdrawal and the account shall be closed and the money in the account forfeited.

(2) Interest earned on an account shall be distributed proportionately to the account holder and other contributors based on the individual contributions of each.

(3) Penalties and money forfeited by an account holder under subsection (1) shall be deposited in the individual or family development account reserve fund of the community development organization that administered the account.

(4) An account holder shall name at least 1 contingent beneficiary at the time the account is established and may change beneficiaries at any time. In the event of an account holder's death, the account shall be transferred to a contingent beneficiary. If the named beneficiary is deceased or otherwise cannot accept the transfer, the money shall be transferred to the estate of the beneficiary.

Sec. 6. (1) Money deposited in or withdrawn pursuant to section 4 from an individual or family development account by an account holder is exempt from taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145.

(2) Interest earned by a family development account is exempt from taxation pursuant to the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(3) A contributor may deduct the amount of contributions made to accounts from the taxpayer's tax base as determined under section 9 of the single business tax act, 1975 PA 228, MCL 208.9.

(4) The administrator of a community development organization

that administers an account, with the cooperation of the participating financial institutions, shall submit the names of contributors and the total amount that each contributor contributes to a family development account reserve fund for each tax year to the department. The director shall determine the date by which the information shall be submitted to the department by the administrator of the community development organization. The department shall submit verification of qualified tax credits claimed pursuant to this act to the department of treasury.

Sec. 7. This act is effective January 1, 2005.

Enacting section 1. This act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) Senate Bill No. 642.

(b) Senate Bill No. 641.