

HOUSE BILL No. 5138

August 23, 2007, Introduced by Reps. Melton, Clack, Johnson, Clemente, Constan, Bieda, Hopgood, Sak, Kathleen Law, Accavitti, Polidori, Brown, Corriveau, Coulouris, Byrum, Angerer and Dean and referred to the Committee on Education.

A bill to amend 2000 PA 161, entitled
"Michigan education savings program act,"
by amending sections 2, 3, 4, 5, 7, 9, 11, 12, and 15 (MCL
390.1472, 390.1473, 390.1474, 390.1475, 390.1477, 390.1479,
390.1481, 390.1482, and 390.1485), sections 2, 7, and 9 as amended
by 2004 PA 387 and section 3 as amended by 2001 PA 215.

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 account
3 established under this act.

4 (b) "Account owner" means any of the following:

5 (i) The individual who enters into a Michigan education savings
6 program agreement and establishes an education savings account. The
7 account owner may also be the designated beneficiary of the

1 account.

2 (ii) An entity exempt from taxation under section 501(c)(3) of
3 the internal revenue code or an estate or trust that enters into a
4 Michigan education savings program agreement and establishes an
5 education savings account.

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

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

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

13 (f) "Eligible educational institution" means that term as
14 defined in section 529 of the internal revenue code or a college,
15 university, community college, or junior college described in
16 section 4, 5, or 6 of article VIII of the state constitution of
17 1963 or established under section 7 of article VIII of the state
18 constitution of 1963.

19 (g) "Internal revenue code" means the United States internal
20 revenue code of 1986 in effect on January 1, 2002 or at the option
21 of the taxpayer, in effect for the current year.

22 (h) "Management contract" means the contract executed between
23 the treasurer and ~~the~~ **A** program manager.

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

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

1 an education savings account.

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

4 (l) "Program manager" means ~~the~~**AN** entity selected by the
5 treasurer to act as ~~the~~**A** manager of **1 OR MORE OF THE SAVINGS PLANS**
6 **OFFERED UNDER** the program.

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

10 (n) "Qualified withdrawal" means a distribution that is not
11 subject to a penalty or an excise tax under section 529 of the
12 internal revenue code, a penalty under this act, or taxation under
13 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and
14 that meets any of the following:

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

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

20 (iii) A withdrawal made because a beneficiary received a
21 scholarship that paid for all or part of the qualified higher
22 education expenses of the beneficiary to the extent the amount of
23 the withdrawal does not exceed the amount of the scholarship.

24 (iv) **A WITHDRAWAL MADE BECAUSE A BENEFICIARY ATTENDED A SERVICE**
25 **ACADEMY TO THE EXTENT THAT THE AMOUNT OF THE WITHDRAWAL DOES NOT**
26 **EXCEED THE COSTS OF THE ADVANCED EDUCATION ATTRIBUTABLE TO THE**
27 **BENEFICIARY'S ATTENDANCE IN THE SERVICE ACADEMY.**

1 (v) ~~(iv)~~—A transfer of funds due to the termination of the
2 management contract as provided in section 5.

3 (vi) ~~(v)~~—A transfer of funds as provided in section 8.

4 (O) "SAVINGS PLAN" OR "PLANS" MEANS A PLAN THAT PROVIDES
5 DIFFERENT INVESTMENT STRATEGIES AND ALLOWS ACCOUNT DISTRIBUTIONS
6 FOR QUALIFIED HIGHER EDUCATION EXPENSES.

7 (P) "SERVICE ACADEMY" MEANS THE UNITED STATES MILITARY
8 ACADEMY, UNITED STATES NAVAL ACADEMY, UNITED STATES AIR FORCE
9 ACADEMY, UNITED STATES COAST GUARD ACADEMY, OR UNITED STATES
10 MERCHANT MARINE ACADEMY.

11 (Q) ~~(e)~~—"Treasurer" means the state treasurer.

12 Sec. 3. (1) The Michigan education savings program is
13 established in the department of treasury. **THE PROGRAM MAY CONSIST**
14 **OF 1 OR MORE SAVINGS PLANS.**

15 (2) The treasurer shall solicit proposals from entities to be
16 ~~the~~ a program manager to provide the services described in
17 subsection (5).

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

21 (4) The state treasurer shall administer the Michigan
22 education savings program and shall be the trustee for the funds of
23 the Michigan education savings program. **THE TREASURER MAY USE**
24 **PROGRAM REVENUES TO MAINTAIN OR ENHANCE THE STATE'S QUALIFIED**
25 **TUITION PROGRAMS.**

26 (5) The treasurer may employ or contract with personnel and
27 contract for services necessary for the administration of **EACH**

1 **SAVINGS PLAN UNDER** the program and the investment of the assets of
2 **EACH SAVINGS PLAN UNDER** the program including, but not limited to,
3 managerial, professional, legal, clerical, technical, and
4 administrative personnel or services.

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

11 (a) Financial stability.

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

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

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

17 (e) The entity's plan for marketing the ~~program~~ **SAVINGS PLAN**
18 and the investment it is willing to make to promote the ~~program~~
19 **SAVINGS PLAN**.

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

22 (g) The minimum initial deposit and minimum contributions that
23 the entity will require which, for the first year of the ~~program~~
24 **SAVINGS PLAN**, shall not be greater than \$25.00 for a cash
25 contribution or \$15.00 per pay period for payroll deduction plans.

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

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(7) The treasurer shall enter into a contract with ~~the~~**EACH** 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 **SAVINGS PLAN OR PLANS OFFERED UNDER 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, **EXCLUSIVE OF INITIAL SALES CHARGES**, which shall not exceed ~~<<1.5%~~ **2.0%** 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 **SAVINGS PLAN OR PLANS OFFERED UNDER THE** program in compliance with requirements of this act and its management contract and to manage the **SAVINGS PLAN OR PLANS OFFERED UNDER THE** program to qualify as a qualified tuition program under

1 section 529 of the internal revenue code.

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

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

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

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

11 (n) Provide the treasurer with copies of all regulatory
12 filings and reports related to the **SAVINGS PLAN OR PLANS OFFERED**
13 **UNDER THE** program made during the term of the management contract
14 or while the program manager is holding any accounts, other than
15 confidential filings or reports except to the extent those filings
16 or reports are related to or are a part of the **SAVINGS PLAN OR**
17 **PLANS OFFERED UNDER THE** program. It is the responsibility of the
18 program manager to make available for review by the treasurer the
19 results of any periodic examination of the program manager by any
20 state or federal banking, insurance, or securities commission,
21 except to the extent that the report or reports are not required to
22 be disclosed under state or federal law.

23 (o) Ensure that any description of the **SAVINGS PLAN OR PLANS**
24 **OFFERED UNDER THE** program, whether in writing or through the use of
25 any media, is consistent with the marketing plan developed by the
26 program manager.

27 (p) Take any other necessary and proper activities to carry

1 out the purposes of this act.

2 Sec. 4. The treasurer shall be responsible for the ongoing
3 supervision of ~~the~~**EACH** management contract in consultation with
4 the board.

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

7 (2) The treasurer may terminate ~~the~~**A** management contract
8 based on the criteria specified in the management contract.

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

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

17 (3) To open an education savings account, the individual or
18 entity described in section 2(b)(ii) shall enter into a Michigan
19 education savings program agreement with the program. The Michigan
20 education savings program agreement shall be in the form prescribed
21 by ~~the~~**A** program manager and approved by the treasurer and contain
22 all of the following:

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

25 (b) A designated beneficiary.

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

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

3 (4) Any individual or entity described in section 2(b)(ii) may
4 make contributions to an account.

5 (5) Contributions to accounts shall only be made in cash, by
6 check, by money order, by credit card, or by any similar method as
7 approved by the state treasurer but shall not be property.

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

11 (7) Distributions from an account shall be requested on a form
12 approved by the state treasurer. ~~The-A~~ program manager may retain
13 from the distribution the amount necessary to comply with federal
14 and state tax laws. Distributions may be made in the following
15 manner:

16 (a) Directly to an eligible education institution.

17 (b) In the form of a check payable to both the designated
18 beneficiary and the eligible educational institution.

19 (c) In the form of a check payable to the designated
20 beneficiary or account holder.

21 (8) Except as otherwise provided in this subsection for tax
22 years that begin before January 1, 2002, if the distribution is not
23 a qualified withdrawal, ~~the-A~~ program manager shall withhold an
24 amount equal to 10% of the distribution amount as a penalty and pay
25 that amount to the department for deposit into the general fund.
26 For a distribution made after December 31, 2001 that is not a
27 qualified withdrawal, if an excise tax or penalty is imposed under

1 section 529 of the internal revenue code pursuant to section
2 530(d)(4) of the internal revenue code, a penalty shall not be
3 imposed under this subsection for that distribution. If a
4 distribution that is not a qualified withdrawal is made after
5 December 31, 2001 and an excise tax or penalty is not imposed under
6 section 529 of the internal revenue code pursuant to section
7 530(d)(4) of the internal revenue code on that distribution, ~~the A~~
8 program manager shall withhold an amount equal to 10% of the
9 accumulated earnings attributable to that distribution amount as a
10 penalty and pay that amount to the department for deposit into the
11 general fund. The penalty under this subsection may be increased or
12 decreased if the treasurer and the program manager determine that
13 it is necessary to increase or decrease the penalty to comply with
14 section 529 of the internal revenue code.

15 (9) ~~The EACH SAVINGS PLAN UNDER THE~~ program shall provide
16 separate accounting for each designated beneficiary.

17 Sec. 9. (1) Except as otherwise provided in this section, an
18 account owner or a designated beneficiary of any account shall not
19 direct the investment of any contributions to an account or the
20 earnings on an account.

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

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

27 (b) Once each calendar year with respect to the accumulated

1 account balance.

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

4 (3) The program may allow board members or employees of the
5 program, or the board members or employees of a contractor hired by
6 the program to perform administrative services, to make
7 contributions to an account.

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

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

16 (2) ~~The~~**EACH** program manager shall provide statements that
17 identify the individual contributions made during the tax year, the
18 total contributions made to the account for the tax year, the value
19 of the account at the end of the tax year, distributions made
20 during the tax year, and any other information that the treasurer
21 requires to each account owner on or before the January 31
22 following the end of each calendar year.

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

27 (a) The terms and conditions for establishing an education

1 savings account.

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

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

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

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

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

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

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

22 Sec. 15. ~~The~~ **EACH** program manager shall file an annual report
23 with the treasurer and the board that includes all of the
24 following:

25 (a) The names and identification numbers of account owners,
26 designated beneficiaries, and distributees of family tuition
27 accounts. The information reported pursuant to this subdivision is

1 not subject to the freedom of information act, 1976 PA 442, MCL
2 15.231 to 15.246.

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

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

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