

HOUSE BILL No. 6471

September 18, 2008, Introduced by Reps. Lindberg, Lahti, McDowell, Brown, Byrnes, Condino, Ebli, Espinoza, Bieda, Polidori, Sheltroun, Vagnozzi, Alma Smith, Hammon and Hammel and referred to the Committee on Tax Policy.

A bill to amend 2000 PA 161, entitled
"Michigan education savings program act,"
by amending sections 2 and 7 (MCL 390.1472 and 390.1477), as
amended by 2007 PA 153.

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
8 account.

9 (ii) ~~An~~ **A STATE OR LOCAL GOVERNMENT AGENCY OR INSTRUMENTALITY**
10 **OR AN** entity exempt from taxation under section 501(c)(3) of the
11 internal revenue code or an estate or trust that enters into a

1 Michigan education savings program agreement and establishes an
2 education 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, 2002 or at the option
18 of the taxpayer, in effect for the current year.

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

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

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

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

1 (l) "Program manager" means an entity selected by the treasurer
2 to act as a manager of 1 or more of the savings plans offered under
3 the program.

4 (m) "Qualified higher education expenses" means qualified
5 higher education expenses as defined in section 529 of the internal
6 revenue code.

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

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

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

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

21 (iv) A withdrawal made because a beneficiary attended a service
22 academy to the extent that the amount of the withdrawal does not
23 exceed the costs of the advanced education attributable to the
24 beneficiary's attendance in the service academy.

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

27 (vi) A transfer of funds as provided in section 8.

1 (o) "Savings plan" or "plans" means a plan that provides
2 different investment strategies and allows account distributions
3 for qualified higher education expenses.

4 (p) "Service academy" means the United States military
5 academy, United States naval academy, United States air force
6 academy, United States coast guard academy, or United States
7 merchant marine academy.

8 (q) "Treasurer" means the state treasurer.

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 a program manager and approved by the treasurer and contain all
22 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, **UNLESS THE ACCOUNT IS OPENED BY A STATE OR**

1 LOCAL GOVERNMENT AGENCY OR INSTRUMENTALITY OR A PERSON EXEMPT FROM
2 TAXATION AS AN ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE
3 INTERNAL REVENUE CODE, AS PART OF A SCHOLARSHIP PROGRAM. THE
4 ACCOUNT OWNER, WITH THE APPROVAL OF AND ON CONDITIONS DETERMINED BY
5 THE AGREEMENT, MAY SUBSEQUENTLY SUBSTITUTE ANOTHER PERSON FOR THE
6 DESIGNATED BENEFICIARY ORIGINALLY NAMED.

7 (d) Any other information that the treasurer or program
8 manager considers necessary.

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

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

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

17 (7) Distributions from an account shall be requested on a form
18 approved by the state treasurer. A program manager may retain from
19 the distribution the amount necessary to comply with federal and
20 state tax laws. Distributions may be made in the following manner:

21 (a) Directly to an eligible education institution.

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

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

26 (D) IN THE FORM OF AN ELECTRONIC FUNDS TRANSFER TO AN ACCOUNT
27 SPECIFIED BY THE DESIGNATED BENEFICIARY OR ACCOUNT HOLDER.

1 (8) Except as otherwise provided in this subsection for tax
2 years that begin before January 1, 2002, if the distribution is not
3 a qualified withdrawal, a program manager shall withhold an amount
4 equal to 10% of the distribution amount as a penalty and pay that
5 amount to the department for deposit into the general fund. For a
6 distribution made after December 31, 2001 that is not a qualified
7 withdrawal, if an excise tax or penalty is imposed under section
8 529 of the internal revenue code pursuant to section 530(d)(4) of
9 the internal revenue code, a penalty shall not be imposed under
10 this subsection for that distribution. If a distribution that is
11 not a qualified withdrawal is made after December 31, 2001 and an
12 excise tax or penalty is not imposed under section 529 of the
13 internal revenue code pursuant to section 530(d)(4) of the internal
14 revenue code on that distribution, a program manager shall withhold
15 an amount equal to 10% of the accumulated earnings attributable to
16 that distribution amount as a penalty and pay that amount to the
17 department for deposit into the general fund. The penalty under
18 this subsection may be increased or decreased if the treasurer and
19 the program manager determine that it is necessary to increase or
20 decrease the penalty to comply with section 529 of the internal
21 revenue code.

22 (9) Each savings plan under the program shall provide separate
23 accounting for each designated beneficiary.