

SENATE BILL No. 544

September 12, 2017, Introduced by Senators COLBECK, PAVLOV and GREEN and referred to the Committee on Education.

A bill to amend 2000 PA 161, entitled
"Michigan education savings program act,"
(MCL 390.1471 to 390.1486) by amending the title and by adding part
2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to create the Michigan education savings program; **TO
CREATE AN ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM;** to provide
for education savings accounts; to prescribe the powers and duties
of certain state agencies, boards, and departments; **TO CREATE A
FUND; TO MAKE APPROPRIATIONS;** to allow certain tax credits or
deductions; and to provide for penalties and remedies.

PART 2

**SEC. 17. THIS PART SHALL BE KNOWN AND MAY BE CITED AS THE
"ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM ACT".**

1 SEC. 18. AS USED IN THIS PART:

2 (A) "ACCOUNT" OR "ENHANCED MICHIGAN EDUCATION SAVINGS ACCOUNT"
3 MEANS AN ACCOUNT ESTABLISHED UNDER THIS PART.

4 (B) "ACCOUNT OWNER" MEANS THE PARENT OF THE STUDENT OR THE
5 STUDENT IF HE OR SHE IS 18 YEARS OF AGE OR OLDER.

6 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF TREASURY.

7 (D) "DEPENDENT" MEANS AN INDIVIDUAL FOR WHOM THE ACCOUNT OWNER
8 MAY CLAIM A DEPENDENCY EXEMPTION ON HIS OR HER FEDERAL INCOME TAX
9 RETURN PURSUANT TO THE INTERNAL REVENUE CODE OF 1986, 26 USC 1 TO
10 9834.

11 (E) "ELIGIBLE SERVICES" MEANS ANY INSTRUCTIONAL SERVICES,
12 SUPPLEMENTAL SERVICES, AND BACK OFFICE SERVICES OFFERED TO STUDENTS
13 BY A PUBLIC SCHOOL THAT THE DEPARTMENT OF EDUCATION DETERMINES
14 PURSUANT TO THIS PART ARE QUALIFIED FOR PAYMENT FROM AN ACCOUNT.
15 ELIGIBLE SERVICES MAY INCLUDE EXTRACURRICULAR SERVICES OFFERED BY A
16 PUBLIC SCHOOL.

17 (F) "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM AGREEMENT" OR
18 "PROGRAM AGREEMENT" MEANS THE AGREEMENT BETWEEN THE PROGRAM AND THE
19 ACCOUNT OWNER WHO ESTABLISHES AN ACCOUNT.

20 (G) "ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM FUND" OR
21 "FUND" MEANS THE FUND CREATED IN SECTION 19.

22 (H) "MANAGEMENT CONTRACT" MEANS THE CONTRACT EXECUTED BETWEEN
23 THE TREASURER AND A PROGRAM MANAGER.

24 (I) "PARENT" MEANS A RESIDENT OF THIS STATE WHO IS A
25 BIOLOGICAL OR ADOPTIVE PARENT, LEGAL GUARDIAN, LEGAL CUSTODIAN, OR
26 OTHER PERSON WITH AUTHORITY TO ACT ON BEHALF OF THE STUDENT.

27 (J) "PROGRAM" MEANS THE ENHANCED MICHIGAN EDUCATION SAVINGS

1 PROGRAM ESTABLISHED PURSUANT TO THIS PART.

2 (K) "PROGRAM MANAGER" MEANS AN ENTITY SELECTED BY THE
3 TREASURER TO ACT AS A MANAGER OF 1 OR MORE OF THE SAVINGS PLANS
4 OFFERED UNDER THE PROGRAM.

5 (I) "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN THE REVISED
6 SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852.

7 (M) "QUALIFIED WITHDRAWAL" MEANS A DISTRIBUTION THAT IS NOT
8 SUBJECT TO A PENALTY UNDER THIS PART OR TAXATION UNDER THE INCOME
9 TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713, AND THAT MEETS
10 ANY OF THE FOLLOWING:

11 (i) A WITHDRAWAL FROM AN ACCOUNT TO PAY FOR ELIGIBLE SERVICES
12 PROVIDED BY A PUBLIC SCHOOL TO THE STUDENT TO PAY FOR POSTSECONDARY
13 EDUCATION EXPENSES INCURRED AFTER THE ACCOUNT IS ESTABLISHED.

14 (ii) A TRANSFER OF FUNDS DUE TO THE TERMINATION OF THE
15 MANAGEMENT CONTRACT AS PROVIDED IN SECTION 20.

16 (iii) A TRANSFER OF FUNDS AS PROVIDED IN SECTION 24.

17 (N) "SAVINGS PLAN" OR "PLANS" MEANS A PLAN OR PLANS THAT
18 PROVIDE DIFFERENT INVESTMENT STRATEGIES AND ALLOWS ACCOUNT
19 DISTRIBUTIONS FOR ELIGIBLE SERVICES.

20 (O) "STUDENT" MEANS A PUPIL ENROLLED IN AT LEAST 1 COURSE IN A
21 PUBLIC SCHOOL.

22 (P) "TREASURER" MEANS THE STATE TREASURER.

23 SEC. 19. (1) THE ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM
24 FUND IS ESTABLISHED IN THE DEPARTMENT. THE DEPARTMENT SHALL
25 ESTABLISH AN ENHANCED MICHIGAN EDUCATION SAVINGS PROGRAM, AND THE
26 PROGRAM MAY CONSIST OF 1 OR MORE SAVINGS PLANS.

27 (2) THE TREASURER SHALL SOLICIT PROPOSALS FROM ENTITIES TO BE

1 A PROGRAM MANAGER TO PROVIDE THE SERVICES DESCRIBED IN SUBSECTION
2 (5) .

3 (3) THE PURPOSES, POWERS, AND DUTIES OF THE PROGRAM ARE VESTED
4 IN AND SHALL BE EXERCISED BY THE TREASURER OR THE DESIGNEE OF THE
5 TREASURER.

6 (4) THE STATE TREASURER SHALL ADMINISTER THE FUND AND SHALL BE
7 THE TRUSTEE FOR THE FUND. SUBJECT TO APPROPRIATION, THE TREASURER
8 MAY USE PROGRAM REVENUES IN THE FUND TO MAINTAIN OR ENHANCE THE
9 STATE'S EDUCATION PROGRAMS.

10 (5) THE TREASURER MAY EMPLOY OR CONTRACT WITH PERSONNEL AND
11 CONTRACT FOR SERVICES NECESSARY FOR THE ADMINISTRATION OF EACH
12 SAVINGS PLAN UNDER THE PROGRAM AND THE INVESTMENT OF THE ASSETS OF
13 EACH SAVINGS PLAN AND THE FUND UNDER THE PROGRAM, INCLUDING, BUT
14 NOT LIMITED TO, MANAGERIAL, PROFESSIONAL, LEGAL, CLERICAL,
15 TECHNICAL, AND ADMINISTRATIVE PERSONNEL OR SERVICES.

16 (6) WHEN SELECTING A PROGRAM MANAGER, THE TREASURER SHALL GIVE
17 PREFERENCE TO PROPOSALS FROM SINGLE ENTITIES THAT PROPOSE TO
18 PROVIDE ALL OF THE FUNCTIONS DESCRIBED IN SUBSECTION (5) AND THAT
19 DEMONSTRATE THE MOST ADVANTAGEOUS COMBINATION, TO BOTH POTENTIAL
20 PARTICIPANTS AND THIS STATE, OF THE FOLLOWING FACTORS AND THE
21 MANAGEMENT CONTRACT SHALL ADDRESS THESE FACTORS:

22 (A) FINANCIAL STABILITY.

23 (B) THE SAFETY OF THE INVESTMENT INSTRUMENTS BEING OFFERED.

24 (C) THE ABILITY OF THE INVESTMENT INSTRUMENTS TO TRACK THE
25 INCREASING COSTS OF HIGHER EDUCATION.

26 (D) THE ABILITY OF THE ENTITY TO SATISFY THE RECORD-KEEPING
27 AND REPORTING REQUIREMENTS OF THIS PART.

1 (E) THE ENTITY'S PLAN FOR MARKETING THE SAVINGS PLAN AND THE
2 INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE SAVINGS PLAN.

3 (F) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR
4 OPENING OR MAINTAINING AN ACCOUNT.

5 (G) THE ABILITY OF THE ENTITY TO ACCEPT ELECTRONIC
6 WITHDRAWALS, INCLUDING PAYROLL DEDUCTION PLANS.

7 (7) THE TREASURER SHALL ENTER INTO A CONTRACT WITH EACH
8 PROGRAM MANAGER, WHICH SHALL ADDRESS THE RESPECTIVE AUTHORITY AND
9 RESPONSIBILITY OF THE TREASURER AND THE PROGRAM MANAGER TO DO ALL
10 OF THE FOLLOWING:

11 (A) DEVELOP AND IMPLEMENT THE SAVINGS PLAN OR PLANS OFFERED
12 UNDER THE PROGRAM.

13 (B) INVEST THE MONEY RECEIVED IN 1 OR MORE INVESTMENT
14 INSTRUMENTS.

15 (C) ENGAGE THE SERVICES OF CONSULTANTS ON A CONTRACTUAL BASIS
16 TO PROVIDE PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE.

17 (D) DETERMINE THE USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT
18 DEPOSITORIES AND FINANCIAL MANAGERS.

19 (E) CHARGE, IMPOSE, AND COLLECT ANNUAL ADMINISTRATIVE FEES AND
20 SERVICE IN CONNECTION WITH ANY AGREEMENTS, CONTRACTS, AND
21 TRANSACTIONS RELATING TO INDIVIDUAL ACCOUNTS, EXCLUSIVE OF INITIAL
22 SALES CHARGES, WHICH SHALL NOT EXCEED 2.0% OF THE AVERAGE DAILY NET
23 ASSETS OF THE ACCOUNT.

24 (F) DEVELOP MARKETING PLANS AND PROMOTIONAL MATERIAL.

25 (G) ESTABLISH THE METHODS BY WHICH FUNDS ARE ALLOCATED TO PAY
26 FOR ADMINISTRATIVE COSTS.

27 (H) PROVIDE CRITERIA FOR TERMINATING AND NOT RENEWING THE

1 MANAGEMENT CONTRACT.

2 (I) ADDRESS THE ABILITY OF THE PROGRAM MANAGER TO TAKE ANY
3 ACTION REQUIRED TO KEEP THE SAVINGS PLAN OR PLANS OFFERED UNDER THE
4 PROGRAM IN COMPLIANCE WITH REQUIREMENTS OF THIS PART AND ITS
5 MANAGEMENT CONTRACT.

6 (J) KEEP ADEQUATE RECORDS OF EACH ACCOUNT AND PROVIDE THE
7 TREASURER WITH INFORMATION THAT THE TREASURER REQUIRES RELATED TO
8 THOSE RECORDS.

9 (K) COMPILE THE INFORMATION CONTAINED IN STATEMENTS REQUIRED
10 TO BE PREPARED UNDER THIS PART AND PROVIDE THAT COMPILATION TO THE
11 TREASURER IN A TIMELY MANNER.

12 (L) HOLD ALL ACCOUNTS FOR THE BENEFIT OF THE ACCOUNT OWNER.

13 (M) PROVIDE FOR AUDITS AT LEAST ANNUALLY BY A FIRM OF
14 CERTIFIED PUBLIC ACCOUNTANTS.

15 (N) PROVIDE THE TREASURER WITH COPIES OF ALL REGULATORY
16 FILINGS AND REPORTS RELATED TO THE SAVINGS PLAN OR PLANS OFFERED
17 UNDER THE PROGRAM MADE DURING THE TERM OF THE MANAGEMENT CONTRACT
18 OR WHILE THE PROGRAM MANAGER IS HOLDING ANY ACCOUNTS, OTHER THAN
19 CONFIDENTIAL FILINGS OR REPORTS EXCEPT TO THE EXTENT THOSE FILINGS
20 OR REPORTS ARE RELATED TO OR ARE A PART OF THE SAVINGS PLAN OR
21 PLANS OFFERED UNDER THE PROGRAM. THE PROGRAM MANAGER SHALL MAKE
22 AVAILABLE FOR REVIEW BY THE TREASURER THE RESULTS OF ANY PERIODIC
23 EXAMINATION OF THE PROGRAM MANAGER BY ANY STATE OR FEDERAL BANKING,
24 INSURANCE, OR SECURITIES COMMISSION, EXCEPT TO THE EXTENT THAT THE
25 REPORT OR REPORTS ARE NOT REQUIRED TO BE DISCLOSED UNDER STATE OR
26 FEDERAL LAW.

27 (O) ENSURE THAT ANY DESCRIPTION OF THE SAVINGS PLAN OR PLANS

1 OFFERED UNDER THE PROGRAM, WHETHER IN WRITING OR THROUGH THE USE OF
2 ANY MEDIA, IS CONSISTENT WITH THE MARKETING PLAN DEVELOPED BY THE
3 PROGRAM MANAGER.

4 (P) TAKE ANY OTHER NECESSARY AND PROPER ACTIONS TO CARRY OUT
5 THE PURPOSES OF THIS PART.

6 SEC. 20. (1) THE TREASURER SHALL BE RESPONSIBLE FOR THE
7 ONGOING SUPERVISION OF EACH MANAGEMENT CONTRACT.

8 (2) A MANAGEMENT CONTRACT SHALL BE FOR A TERM OF YEARS
9 SPECIFIED IN THE MANAGEMENT CONTRACT.

10 (3) THE TREASURER MAY TERMINATE A MANAGEMENT CONTRACT BASED ON
11 THE CRITERIA SPECIFIED IN THE MANAGEMENT CONTRACT.

12 (4) THE TREASURER MAY ENTER INTO CONTRACTS THAT IT CONSIDERS
13 NECESSARY AND PROPER FOR THE IMPLEMENTATION OF THIS PROGRAM.

14 SEC. 26. (1) EACH PROGRAM MANAGER SHALL REPORT DISTRIBUTIONS
15 FROM AN ACCOUNT TO A PUBLIC SCHOOL FOR THE BENEFIT OF THE STUDENT
16 AND DISTRIBUTIONS FROM AN ACCOUNT FOR POSTSECONDARY EDUCATION
17 EXPENSES DURING A TAX YEAR TO THE INTERNAL REVENUE SERVICE AND THE
18 ACCOUNT OWNER OR, TO THE EXTENT REQUIRED BY FEDERAL LAW OR
19 REGULATION, TO THE DISTRIBUTE.

20 (2) EACH PROGRAM MANAGER SHALL PROVIDE STATEMENTS THAT
21 IDENTIFY THE CONTRIBUTIONS MADE DURING THE TAX YEAR, THE TOTAL
22 CONTRIBUTIONS MADE TO THE ACCOUNT FOR THE TAX YEAR, THE VALUE OF
23 THE ACCOUNT AT THE END OF THE TAX YEAR, DISTRIBUTIONS MADE DURING
24 THE TAX YEAR, AND ANY OTHER INFORMATION THAT THE TREASURER REQUIRES
25 TO EACH ACCOUNT OWNER ON OR BEFORE THE JANUARY 31 FOLLOWING THE END
26 OF EACH CALENDAR YEAR.

27 (3) EACH PROGRAM MANAGER SHALL DISCLOSE THE FOLLOWING

1 INFORMATION IN WRITING TO EACH ACCOUNT OWNER OF AN ENHANCED
2 MICHIGAN EDUCATION SAVINGS ACCOUNT AND ANY OTHER PERSON WHO
3 REQUESTS INFORMATION ABOUT AN ACCOUNT:

4 (A) THE TERMS AND CONDITIONS FOR ESTABLISHING AN ACCOUNT.

5 (B) RESTRICTIONS ON THE SUBSTITUTIONS OF STUDENTS AND TRANSFER
6 OF ACCOUNT FUNDS.

7 (C) THE PERSON ENTITLED TO TERMINATE A PROGRAM AGREEMENT.

8 (D) THE PERIOD OF TIME DURING WHICH A STUDENT MAY RECEIVE
9 BENEFITS UNDER THE PROGRAM AGREEMENT.

10 (E) THE TERMS AND CONDITIONS UNDER WHICH MONEY MAY BE
11 WITHDRAWN FROM AN ACCOUNT OR THE PROGRAM, INCLUDING, BUT NOT
12 LIMITED TO, ANY REASONABLE CHARGES AND FEES AND PENALTIES THAT MAY
13 BE IMPOSED FOR WITHDRAWAL.

14 (F) THE POTENTIAL TAX CONSEQUENCES ASSOCIATED WITH
15 CONTRIBUTIONS TO AND DISTRIBUTIONS AND WITHDRAWALS FROM ACCOUNTS.

16 (G) INVESTMENT HISTORY AND POTENTIAL GROWTH OF ACCOUNT FUNDS
17 AND A PROJECTION OF THE IMPACT OF THE GROWTH OF THE ACCOUNT FUNDS
18 ON THE MAXIMUM AMOUNT ALLOWABLE IN AN ACCOUNT.

19 (H) ALL OTHER RIGHTS AND OBLIGATIONS UNDER PROGRAM AGREEMENTS
20 AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS OF A CONTRACT OR AN
21 AGREEMENT ENTERED INTO UNDER THIS PART.

22 SEC. 27. (1) THIS PART AND ANY AGREEMENT UNDER THIS PART SHALL
23 NOT BE CONSTRUED OR INTERPRETED TO DO ANY OF THE FOLLOWING:

24 (A) GUARANTEE THAT A STUDENT WILL BE ADMITTED TO A PUBLIC
25 SCHOOL OF HIS OR HER CHOICE OR, UPON ADMISSION TO A PUBLIC SCHOOL,
26 WILL BE PERMITTED TO CONTINUE TO ATTEND OR WILL RECEIVE A DEGREE
27 FROM THE PUBLIC SCHOOL.

1 (B) GUARANTEE THAT AMOUNTS CONTRIBUTED TO AN ACCOUNT WILL BE
2 SUFFICIENT TO COVER THE ELIGIBLE SERVICES OF A STUDENT.

3 (2) THIS PART DOES NOT CREATE AND SHALL NOT BE CONSTRUED TO
4 CREATE ANY OBLIGATION UPON THIS STATE OR ANY AGENCY OR
5 INSTRUMENTALITY OF THIS STATE TO GUARANTEE FOR THE BENEFIT OF AN
6 ACCOUNT OWNER OR STUDENT ANY OF THE FOLLOWING:

7 (A) THE RATE OF INTEREST OR OTHER RETURN ON AN ACCOUNT.

8 (B) THE PAYMENT OF INTEREST OR OTHER RETURN ON AN ACCOUNT.

9 (3) THE CONTRACTS, APPLICATIONS, DEPOSIT SLIPS, AND OTHER
10 SIMILAR DOCUMENTS USED IN CONNECTION WITH A CONTRIBUTION TO AN
11 ACCOUNT SHALL CLEARLY INDICATE THAT THE ACCOUNT IS NOT INSURED BY
12 THIS STATE AND THAT THE MONEY DEPOSITED INTO AND INVESTMENT RETURN
13 EARNED ON AN ACCOUNT ARE NOT GUARANTEED BY THIS STATE.

14 SEC. 28. EACH PROGRAM MANAGER SHALL FILE AN ANNUAL REPORT WITH
15 THE TREASURER AND THE BOARD THAT INCLUDES ALL OF THE FOLLOWING:

16 (A) THE NAMES AND IDENTIFICATION NUMBERS OF ACCOUNT OWNERS AND
17 STUDENTS. THE INFORMATION REPORTED PURSUANT TO THIS SUBDIVISION IS
18 NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
19 15.231 TO 15.246.

20 (B) THE TOTAL AMOUNT CONTRIBUTED TO ALL ACCOUNTS DURING THE
21 YEAR.

22 (C) ALL DISTRIBUTIONS FROM ALL ACCOUNTS.

23 (D) ANY INFORMATION THAT THE PROGRAM MANAGER OR TREASURER MAY
24 REQUIRE REGARDING THE TAXATION OF AMOUNTS CONTRIBUTED TO OR
25 WITHDRAWN FROM ACCOUNTS.

26 SEC. 29. (1) CONTRIBUTIONS TO AND INTEREST EARNED ON AN
27 ACCOUNT ARE EXEMPT FROM TAXATION AS PROVIDED IN SECTION 30 OF THE

1 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.30.

2 (2) WITHDRAWALS MADE FROM AN ACCOUNT ARE EXEMPT FROM TAXATION
3 AS PROVIDED IN SECTION 30 OF THE INCOME TAX ACT OF 1967, 1967 PA
4 281, MCL 206.30.