MICHIGAN EDUCATION SAVINGS PROGRAM ACT
Act 161 of 2000

AN ACT to create the Michigan education savings program; to provide for education savings accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies.

History: 2000, Act 161, Imd. Eff. June 16, 2000.

The People of the State of Michigan enact:

390.1471 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan education savings program act”.

History: 2000, Act 161, Imd. Eff. June 16, 2000.

390.1472 Definitions.

Sec. 2. As used in this act:

(a) "Account" or "education savings account" means an account established under this act.

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

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

(*ii*) A state or local government agency or instrumentality, an entity exempt from taxation under section 501(c)(3) of the internal revenue code, an estate or trust, or a corporation that enters into a Michigan education savings program agreement and establishes an education savings account.

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

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

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

(f) "Eligible educational institution" means that term as defined in section 529 of the internal revenue code or 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) "Treasurer" means the state treasurer.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002;—Am. 2004, Act 387, Imd. Eff. Oct. 12, 2004;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007;—Am. 2010, Act 6, Imd. Eff. Mar. 4, 2010.

390.1473 Michigan education savings program; establishment; soliciting proposals; duties and powers vested in treasurer; administration of program; funds trustee; personnel and services; selection of program manager; contract.

Sec. 3. (1) The Michigan education savings program is established in the department of treasury. The program may consist of 1 or more savings plans.

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

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

(4) The state treasurer shall administer the Michigan education savings program and shall be the trustee for the funds of the Michigan education savings program. The treasurer may use program revenues to maintain or enhance the state's qualified tuition programs.

(5) The treasurer may employ or contract with personnel and contract for services necessary for the administration of each savings plan under the program and the investment of the assets of each savings plan under the program including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

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

(a) Financial stability.

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

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

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

(e) The entity's plan for marketing the savings plan and the investment it is willing to make to promote the savings plan.

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

(g) The minimum initial deposit and minimum contributions that the entity will require which, for the first year of the savings plan, shall not be greater than $25.00 for a cash contribution or $15.00 per pay period for payroll deduction plans.

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

(7) The treasurer shall enter into a contract with 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 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 section 529 of the internal revenue code.

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

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

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

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

(n) Provide the treasurer with copies of all regulatory filings and reports related to the savings plan or plans offered under the program made during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports except to the extent those filings or reports are related to or are a part of the savings plan or plans offered under the program. It is the responsibility of the program manager to make available for review by the treasurer the results of any periodic examination of the program manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports are not required to be disclosed under state or federal law.

(o) Ensure that any description of the savings plan or plans offered under the program, whether in writing or through the use of any media, is consistent with the marketing plan developed by the program manager.

(p) Take any other necessary and proper activities to carry out the purposes of this act.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

390.1474 Management contract; supervision by treasurer.

Sec. 4. The treasurer shall be responsible for the ongoing supervision of each management contract in consultation with the board.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

390.1475 Management contract; term; termination.

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

(2) The treasurer may terminate a management contract based on the criteria specified in the management contract.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

390.1476 Contracts.

Sec. 6. The treasurer may enter into contracts that it considers necessary and proper for the implementation of this program.

History: 2000, Act 161, Imd. Eff. June 16, 2000.

390.1477 Education savings accounts; establishment; purpose; agreement; form of contribution; withdrawal; distributions; penalty; separate accounting for each beneficiary.

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

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

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

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

(b) A designated beneficiary. A state or local government agency or instrumentality, a person exempt from taxation as an organization described in section 501(c)(3) of the internal revenue code, or a corporation, as part of a scholarship program, may defer naming a designated beneficiary consistent with the terms of the applicable Michigan education savings program agreement.

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

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

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

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

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

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

(a) Directly to an eligible education institution.

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

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

(d) In the form of an electronic funds transfer to an account specified by the designated beneficiary or account holder.

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

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

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002;—Am. 2004, Act 387, Imd. Eff. Oct. 12, 2004;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007;—Am. 2010, Act 6, Imd. Eff. Mar. 4, 2010.

390.1478 Account owner or beneficiary; changes; transfer.

Sec. 8. (1) An account owner may designate another individual as a successor owner of the account in the event of the death of the account owner.

(2) An account owner may change the designated beneficiary of an account to a member of the family of the previously designated beneficiary as provided in the management contract or as otherwise provided in this act.

(3) An account owner may transfer ownership of all or a portion of an account to an individual or entity that is eligible to be an account owner under this act.

(4) An account owner may transfer all or a portion of an account to another education savings account. The designated beneficiary of the account to which the transfer is made must be a member of the family.

(5) An account owner may transfer all or a portion of an account to an account in a qualified tuition program under section 529 of the internal revenue code, other than the program under this act, once every 12 months, without a change in designated beneficiary.

(6) Changes in designated beneficiaries and transfers under this section are not permitted to the extent that the change or transfer would constitute excess contributions or unauthorized investment choices.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002;—Am. 2004, Act 387, Imd. Eff. Oct. 12, 2004.

390.1479 Account owner or beneficiary; direction of contributions or earnings; selection of investment strategy; contributions by board members or employees; use of interest; restriction.

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

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

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

(b) Once each calendar year with respect to the accumulated account balance.

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

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

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

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002;—Am. 2004, Act 387, Imd. Eff. Oct. 12, 2004;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

****** 390.1480 THIS SECTION IS AMENDED EFFECTIVE JANUARY 26, 2016: See 390.1480.amended ******

390.1480 Maximum account balance limit; limitation; rejection of contribution to designated beneficiary account.

Sec. 10. (1) The maximum account balance limit for all of the accounts that name any 1 individual as the designated beneficiary shall not exceed a maximum of $235,000.00.

(2) The program shall reject a contribution to any account for a designated beneficiary if, at the time of the contribution, the total balance of all accounts for that designated beneficiary has reached the maximum account balance limit under subsection (1). Accounts may continue to accrue earnings if the total balance of all accounts for that beneficiary has reached the maximum account balance limit and shall not be considered to have exceeded the maximum account balance limit under subsection (1). For purposes of this subsection, the total balance of all accounts for that designated beneficiary includes the amount of payment or payments required from a purchaser on behalf of a qualified beneficiary made under an advance tuition payment contract as provided in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, if the designated beneficiary is also the qualified beneficiary.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002.

****** 390.1480.amended THIS AMENDED SECTION IS EFFECTIVE JANUARY 26, 2016 ******

390.1480.amended Maximum account balance limit; limitation; rejection of contribution to designated beneficiary account; total balance of all accounts.

Sec. 10. (1) The maximum account balance limit for all of the accounts that name any 1 individual as the designated beneficiary shall not exceed a maximum of $500,000.00.

(2) The program shall reject a contribution to any account for a designated beneficiary if, at the time of the contribution, the total balance of all accounts for that designated beneficiary has reached the maximum account balance limit under subsection (1). Accounts may continue to accrue earnings if the total balance of all accounts for that beneficiary has reached the maximum account balance limit and shall not be considered to have exceeded the maximum account balance limit under subsection (1). For purposes of this subsection, the total balance of all accounts for that designated beneficiary includes the amount of payment or payments required from a purchaser on behalf of a qualified beneficiary made under an advance tuition payment contract as provided in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442, if the designated beneficiary is also the qualified beneficiary.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2001, Act 215, Eff. Jan. 1, 2002;—Am. 2015, Act 163, Eff. Jan. 26, 2016.

390.1481 Account distributions; report to internal revenue service and account owner; statements.

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

(2) Each program manager shall provide statements that identify the individual contributions made during the tax year, the total contributions made to the account for the tax year, the value of the account at the end of the tax year, distributions made during the tax year, and any other information that the treasurer requires to each account owner on or before the January 31 following the end of each calendar year.

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

390.1482 Disclosure of information.

Sec. 12. Each program manager shall disclose the following information in writing to each account owner of an education savings account and any other person who requests information about an education savings account:

(a) The terms and conditions for establishing an education savings account.

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

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

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

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

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

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

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

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

390.1483 Construction or interpretation of act and agreement.

Sec. 13. This act and any agreement under this act shall not be construed or interpreted to do any of the following:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner.

(b) Guarantee that a designated beneficiary will be admitted to an eligible educational institution or, upon admission to an eligible educational institution, will be permitted to continue to attend or will receive a degree from the eligible educational institution.

(c) Give residency status to an individual merely because the individual is a designated beneficiary.

(d) Guarantee that amounts contributed to an account will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

History: 2000, Act 161, Imd. Eff. June 16, 2000.

390.1484 Obligation upon state, agency, or instrumentality of state.

Sec. 14. (1) This act does not create and shall not be construed to create any obligation upon this state or any agency or instrumentality of this state to guarantee for the benefit of an account owner or designated beneficiary any of the following:

(a) The rate of interest or other return on an account.

(b) The payment of interest or other return on an account.

(2) The contracts, applications, deposit slips, and other similar documents used in connection with a contribution to an account shall clearly indicate that the account is not insured by this state and that the money deposited into and investment return earned on an account are not guaranteed by this state.

History: 2000, Act 161, Imd. Eff. June 16, 2000.

390.1485 Annual report.

Sec. 15. Each program manager shall file an annual report with the treasurer and the board that includes all of the following:

(a) The names and identification numbers of account owners, designated beneficiaries, and distributees of family tuition accounts. The information reported pursuant to this subdivision is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

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

History: 2000, Act 161, Imd. Eff. June 16, 2000;—Am. 2007, Act 153, Imd. Eff. Dec. 20, 2007.

390.1486 Contributions and interest earned as tax exempt; withdrawals as taxable.

Sec. 16. (1) Contributions to and interest earned on an education savings account are exempt from taxation as provided in sections 30 and 30f of the income tax act of 1967, 1967 PA 281, MCL 206.30 and 206.30f.

(2) Withdrawals made from education savings accounts are taxable as provided in section 30 of the income tax act of 1967, 1967 PA 281, MCL 206.30.

History: 2000, Act 161, Imd. Eff. June 16, 2000.