

HOUSE BILL No. 4204

February 7, 2007, Introduced by Reps. Sheen, Robertson, Hoogendyk, Pearce, Stakoe, Hune, Caul, Stahl, Huizenga, Condino, Palmer, Brandenburg, Green, Agema, Marleau, Nofs, Moore and Bieda 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, 7, 9, 11, 12, and 15 (MCL 390.1472, 390.1473, 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

1 account owner may also be the designated beneficiary of the
2 account.

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

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

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

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

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

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

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

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

27 (j) "Michigan education savings program agreement" means the

1 agreement between the program and an account owner that establishes
2 an education savings account.

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

5 (l) "Program manager" means ~~the entity~~ **1 OR MORE ENTITIES**
6 selected by the treasurer to act as ~~the~~ **A** manager of 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 transfer of funds due to the termination of the
25 management contract as provided in section 5.

26 (v) A transfer of funds as provided in section 8.

27 (o) "Treasurer" means the state treasurer.

1 Sec. 3. (1) The Michigan education savings program is
2 established in the department of treasury.

3 (2) The treasurer shall solicit proposals from entities to be
4 ~~the~~**A** program manager to provide the services described in
5 subsection (5).

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

9 (4) The state treasurer shall administer the Michigan
10 education savings program and shall be the trustee for the funds of
11 the Michigan education savings program.

12 (5) The treasurer may employ or contract with personnel and
13 contract for services necessary for the administration of the
14 program and the investment of the assets of the program including,
15 but not limited to, managerial, professional, legal, clerical,
16 technical, and administrative personnel or services.

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

23 (a) Financial stability.

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

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

27 (d) The ability of ~~the~~**AN** entity to satisfy the record-keeping

1 and reporting requirements of this act.

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

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

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

10 (h) The ability of ~~the~~**AN** entity to accept electronic
11 withdrawals, including payroll deduction plans.

12 **(I) THE WILLINGNESS OF AN ENTITY TO OFFER A PROGRAM OF BROKER-**
13 **SOLD PRODUCTS AVAILABLE THROUGH FINANCIAL ADVISORS.**

14 (7) The treasurer shall enter into a contract with ~~the~~**EACH**
15 program manager which shall address the respective authority and
16 responsibility of the treasurer and the program manager to do all
17 of the following:

18 (a) Develop and implement the program.

19 (b) Invest the money received from account owners in 1 or more
20 investment instruments.

21 (c) Engage the services of consultants on a contractual basis
22 to provide professional and technical assistance and advice.

23 (d) Determine the use of financial organizations as account
24 depositories and financial managers.

25 (e) Charge, impose, and collect annual administrative fees and
26 service in connection with any agreements, contracts, and
27 transactions relating to individual accounts which shall not exceed

1 1.5% of the average daily net assets of the account.

2 (f) Develop marketing plans and promotional material.

3 (g) Establish the methods by which funds are allocated to pay
4 for administrative costs.

5 (h) Provide criteria for terminating and not renewing the
6 management contract.

7 (i) Address the ability of the program manager to take any
8 action required to keep the program in compliance with requirements
9 of this act and its management contract and to manage the program
10 to qualify as a qualified tuition program under section 529 of the
11 internal revenue code.

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

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

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

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

21 (n) Provide the treasurer with copies of all regulatory
22 filings and reports related to the program made during the term of
23 the management contract or while the program manager is holding any
24 accounts, other than confidential filings or reports except to the
25 extent those filings or reports are related to or are a part of the
26 program. It is the responsibility of the program manager to make
27 available for review by the treasurer the results of any periodic

1 examination of the program manager by any state or federal banking,
2 insurance, or securities commission, except to the extent that the
3 report or reports are not required to be disclosed under state or
4 federal law.

5 (o) Ensure that any description of the program, whether in
6 writing or through the use of any media, is consistent with the
7 marketing plan developed by the program manager.

8 **(P) OFFER A PROGRAM OF BROKER-SOLD PRODUCTS AVAILABLE THROUGH**
9 **FINANCIAL ADVISORS.**

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

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

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

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

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

1 (b) A designated beneficiary.

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

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

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

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

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

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

19 (a) Directly to an eligible education institution.

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

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

24 (8) Except as otherwise provided in this subsection for tax
25 years that begin before January 1, 2002, if the distribution is not
26 a qualified withdrawal, the program manager shall withhold an
27 amount equal to 10% of the distribution amount as a penalty and pay

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

18 (9) The program shall provide separate accounting for each
19 designated beneficiary.

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

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

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

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

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

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

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

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

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

26 Sec. 12. ~~The~~ **EACH** program manager shall disclose the following
27 information in writing to each account owner of an education

1 savings account and any other person who requests information about
2 an education savings account:

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

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

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

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

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

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

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

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

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

1 (a) The names and identification numbers of account owners,
2 designated beneficiaries, and distributees of family tuition
3 accounts. The information reported pursuant to this subdivision is
4 not subject to the freedom of information act, 1976 PA 442, MCL
5 15.231 to 15.246.

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

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

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

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No. ____ or House Bill No. 4205(request no.
15 00190'07 a) of the 94th Legislature is enacted into law.