Act No. 6
Public Acts of 2010
Approved by the Governor
March 4, 2010
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March 4, 2010
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STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010

Introduced by Reps. Lindberg, Roberts, McDowell, Ebli, Sheltrown, Hansen, Terry Brown, Polidori and Mayes

ENROLLED HOUSE BILL No. 4202

AN ACT to amend 2000 PA 161, entitled "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," 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:

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.

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.

This act is ordered to take immediate effect.

Richard J. Brown

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved ....

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Governor